

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 297.

THE UNITED STATES, APPELLANT,

VS.

FREDERICK MAISH AND THOMAS DRISCOLL, PARTNERS
AS MAISH AND DRISCOLL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA, *Territory of Arizona*, ss:

Be it remembered that heretofore, to wit, on the first day of March, A. D. 1893, Maish & Driscoll, by their attorneys, Charles Weston Wright, esquire, and Rochester Ford, esquire, filed in the office of the clerk of the Court of Private Land Claims, in the city of Tucson, in the Territory of Arizona, a petition, in which said Maish & Driscoll are plaintiffs and the United States et als. is defendant, which said petition is as follows, to wit:

2 In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, *Territory of Arizona*, ss:

| | | |
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| FREDERICK MAISH AND THOMAS DRISCOLL, Partners as Maish & Driscoll, <i>vs.</i> THE UNITED STATES AND THE SANTA CRUZ Water Storage Company, a corporation. | } | No. 6. |
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Petition of Frederick Maish and Thomas Driscoll for the confirmation of their title to the "San Ygnacio de la Canoa" and "Maria Santisima del Carmen," ali's "Buena Vista," private land claims.

Come now your petitioners, Frederick Maish and Thomas Driscoll, and respectfully represent to this honorable court as follows:

That they are, and since the year 1871 have been, partners residing and doing business in the city of Tucson, Territory of Arizona, under the firm name and style of Maish & Driscoll.

That as such partners they are the owners in fee, holders, and possessors of that certain tract of land lying, being, and situate in the county of Pima, Territory of Arizona, commonly known and described as the "San Ygnacio de la Canoa" grant or private land claim, and of that other certain tract of land lying, being, and situate partly in the county of Pima, Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, commonly known and described as the "Maria Santisima del Carmen," alias "Buena Vista," grant or private land claim, each of which tracts is more particularly hereinafter described.

That they own in fee, hold, and possess such lands under and by virtue of two certain instruments of writing, now and hereafter designated as and being grant titles, bearing dates the 15th day of

3 December, 1821, and the 24th day of October, 1831, respectively, duly made and executed by the Governor Intendente of the provinces of Sonora and Sinaloa, and by and on behalf of the State of Sonora, in the Republic of Mexico, under and by virtue of article 11 of Decree No. 70, passed on the 4th day of August, 1824, by the Sovereign Constituent Congress of the United States of Mexico, which article concedes to the States of the Republic of Mexico the rents or revenues which by said law are not reserved to the General Government, one of which revenues is the vacant lands within the respective States, which lands in consequence belong to such States; for the disposition of which lands under said decree the Constituent Congress of the State of Sonora and

Sinaloa passed a law numbered 30, bearing date the 20th day of May, 1825, and other decrees relative thereto by other successive legislatures, which decrees are embodied in sections three, four, five, six, and seven of chapter nine of the Organic Law of the Treasury, said law being numbered 26, bearing date the 2nd day of July, 1834.

That under and by virtue of such laws and decrees such proceedings were thereunder lawfully and regularly had as that the said Governor Intendente of the provinces of Sonora and Sinaloa, and the Government of the State of Sonora, by its officers, duly authorized by the laws aforesaid, duly and regularly, and for a good and valuable consideration, to wit, the sum of two hundred and fifty dollars, and for other good and valuable consideration in said grant title set forth and described, did, on the said 15th day of December, 1821, sell and convey in fee to Thomas and Ygnacio Ortiz the land hereinbefore mentioned and more particularly hereinafter described, known as the "San Ygnacio de la Canoa" grant, and duly and regularly, and for a good and valuable consideration, to wit, the sum of one hundred and ninety dollars, in the lawful money of the

State, and for other good and valuable considerations in said grant
4 title set forth and described, did on the said 24th day of October, 1831, sell and convey in fee to Dona Josefa Morales the land hereinbefore mentioned and more particularly hereinafter described, known as the "Maria Santisima del Carmen," alias "Buena Vista," grant.

That the said San Ygnacio de la Canoa grant was instituted by a petition, dated September 6th, 1820, addressed to the Governor Intendente, who was then the officer of the Spanish Government in charge of the public lands in the jurisdiction of Tubac, and that proceedings of survey, valuation, and publication were taken on this petition as required by the instructions and laws of the royal ordinances of intendentes of December 4th, 1786, and on December 15, 1821, the tract petitioned for and as surveyed according to the calls of the expediente thereof was sold to Thomas and Ygnacio Ortiz, the grantees therein, for two hundred and fifty dollars, which amount was thereupon paid by said grantees; that the said sale was, on December 17, 1821, approved by the Provincial Junta de Hacienda, or Provisional Assembly of the National Public Lands, and on the same date was referred to the Supreme Junta of Royal Hacienda for its approval; that prior to its approval by that body the Mexican revolution culminated, and no further proceedings were taken thereon till January 30, 1849, when an order was made by Pico, the treasurer-general of the State of Sonora, for the issuance to said Tomas and Ygnacio Ortiz of the final testimonio or evidence of title of said grant, which was thereupon done, and the same was recorded in the book of toma de razon for said year 1849.

That the said Maria Santisima del Carmen, alias Buena Vista, grant was instituted by a petition, dated September 30, 1826, addressed to Jose Maria Mendoza, treasurer-general of the free, independent, and sovereign State of Sonora; that proceedings of survey, valuation, and publication were taken on this petition, as required by law number 30, of the First Honorable Constituent Congress of the States of Sonora and Sinaloa united, dated May 20, 1825, and as required by the decrees
5 of successive legislatures, and on September 7th, 1831, at the city or Hermosillo, State of Sonora, Republic of Mexico, the tract

petitioned for and as surveyed according to the calls of the expediente thereof was sold in fee to Dona Josefa Morales, the grantee therein, for the sum of one hundred and ninety dollars, at which the land was valued, which amount was thereupon paid by said grantee, and on October 24, 1831, the said Jose Maria Mendoza, as treasurer-general of the State of Sonora, issued and delivered to said grantee the final testimonio of evidence of title, and the same was recorded on folio 1 of the corresponding book or toma de razon in the archives of said treasurer-general.

That the maps hereto attached and made a part of this petition as Exhibits A and B correctly represent, as near as may be, the lands embraced within the said grants, the boundaries thereof, and where the same are situate.

That the original grant, titles, or instruments of writing by which said grants and each of them were conveyed to the aforesaid grantees, respectively, are not in the possession or under the control of your petitioner, but are, together with other records and papers relating to said grants, in the possession and custody of the United States surveyor-general of the Territory of Arizona, at the city of Tucson; that for this reason the said original documents constituting and creating said grant, together with transcripts or copies thereof, cannot be herewith presented or delivered, nor can copies of said grants be now furnished, as required by the rules of this honorable court, but that when by the order of this court the said original title papers are produced, your petitioners will furnish the necessary and requisite copies of each of said instruments in the Spanish and English languages.

That under the provisions of the eighth section of the act of Congress, approved July 22, 1854, entitled "An act to establish the offices
6 of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and under acts amendatory or in extension thereof or supplemental thereto, your petitioners filed, on September 2, 1879, in the office of the United States surveyor-general for the Territory of Arizona, their petition, asking for the confirmation to them of said grant of San Ygnacio de la Canoa, accompanying which petition were the original title papers of said grant; that thereupon the United States surveyor-general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor-general, in his official report under date of February 20, 1880, to Congress on said grant, reported that the original expediente of the same containing forty-five pages was found in its proper place and in the archives of Mexico; that the writing was on the corresponding stamped paper; that the signatures of the several papers forming the expediente are genuine; that a registry of said title is found in the entries of the book of Toma de Razon for the year 1849, and that the report of Special Agent Hopkins fully established the genuine character of the original title papers, and the report of the said surveyor-general recommended the confirmation of said grant to your petitioners, but that no action was taken thereon by Congress or by any authorities of the United States.

That under the provisions of the eighth section of the aforesaid act of Congress your petitioners filed on December 10, 1881, in the office of the the United States surveyor-general of the Territory of Arizona, their

petition asking for the confirmation to them of said grant of "Maria Santisima del Carmen," alias "Buena Vista," accompanying which petition were the original title papers of said grant; that thereupon the United States surveyor-general caused said grant to be investigated by the said R. C. Hopkins, a duly authorized and competent agent of the United States, and in his official report under date of January 10, 1882, to Congress on said grant said surveyor-general reported that the original expediente of said grant in the Mexican archives and the record in the Toma de Razon has been critically examined by the said Hopkins and that not the slightest irregularity had been discovered in them, and that all the documents and records had been found to be free of suspicion and bearing every impress of good faith and undoubted genuineness, and said report recommended the confirmation of this grant to your petitioners, but that no action was taken thereof by Congress or by any authorities of the United States.

That the statements in each of said reports of said Hopkins and said United States surveyor-general are true, and that each of said grants is, and at the time of the execution of the treaty known as the Gadsden Treaty was, duly recorded in the archives of Mexico.

That your petitioners own, hold, and possess each of said grants under and by virtue of divers and sundry mesne conveyances made by the original grantees of said grants and their grantees to your petitioners, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof your petitioners will furnish to this court at such times and upon such terms as the court may direct.

That the original grantees of each of said grants were Mexicans and citizens of the Republic of Mexico, and at the time of the Gadsden Treaty the owners of each of said grants were likewise Mexicans and citizens of the Republic of Mexico.

That all the steps and proceedings in the matter of the grant and sale of each of the said grants were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in the said grantees of each of said grants, and that said grantees at the time went into the actual possession, use, and occupation of each of said grants and erected the proper monuments, and that said grantees and their descendants and legal representatives have continued ever since and until the present time in the actual possession, use, and occupation of the same, and are now seized and possessed in fee thereof; that each of said grant documents is a complete, definitive grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years, without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grants or either of them was ever claimed, and that your petitioners are entitled to a confirmation of each of said grants in accordance with the meets and bounds set forth in the original surveys and grants of the same.

That the lands claimed by your petitioners are all the lands embraced within the original surveys of each of said grants, to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying maps filed herewith of each of said grants.

Your petitioners further allege on information and belief that there are no persons in possession of any part of either of said grants or claiming either or any part of same otherwise than by the lease or permission of your petitioners, except the Santa Cruz Water Storage Company, a corporation organized and doing business under the laws of the Territory of Arizona, which is possessing and claiming adversely to said grant and adversely to the title of your petitioners a portion of the said Maria Santissima del Carmen alias Buena Vista grant.

Wherefore your petitioners pray that the validity of their said titles may be inquired into and decided, and that the titles of your petitioners to said lands be declared valid, and for such other and further relief as to the court may seem meet and proper in the premises.

CHARLES WESTON WRIGHT,
ROCHESTER FORD,

Attorneys for petitioners.

(Endorsed:) Petition, case No. 6. Filed in Court of Private Land Claims March 1, 1893. James H. Reeder, clerk. By R. L. Long, dep.

9 And be it further remembered that on said first day of March, 1893, a summons was issued, which summons, with all endorsements thereon, is as follows, to wit:

Summons.—U. S. Court of Private Land Claims.

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of Arizona, ss:*

FREDERICK MAISH AND THOMAS DRISCOLL,
partners as Maish & Driscoll, plaintiffs,

versus

THE UNITED STATES AND THE SANTA CRUZ
Valley Water Storage Company, a corpora-
tion, defendants.

Petition filed in the
clerk's office, this 1st
day of March, A. D.
1893.

The President of the United States of America to The United States of America and the Santa Cruz Valley Water Storage Company, a corporation, greeting:

You, and each of you, are hereby notified that an action has been brought in said court, by Frederick Maish and Thomas Driscoll, partners as Maish & Driscoll, plaintiffs, against you as defendant, under the provisions of the act of the Congress of the United States entitled, "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you and that you are required to appear and plead, demur, or answer to the petition filed in said action, in said court, within thirty days after the service of this summons upon you, and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness, the Honorable Joseph R. Reed, Chief Justice of the Court of Private Land Claims, and the seal of the said court, at the city of Tucson,

Arizona Territory, in said district, this first day of March, A. D. 1893, and of the independence of the United States the 116th year.

[COURT SEAL.]

JAMES H. REEDER, *Clerk.*
By R. L. LONG, *Deputy Clerk.*

10 UNITED STATES OF AMERICA, *Territory of Arizona, ss:*

TUCSON, *March 6th, A. D. 1893.*

I hereby certify that I received the within writ on the 4th day of March, A. D. 1893, and that I have personally served the same upon the said defendant, M. P. Freeman, president of the Santa Cruz Valley Water Storage Company, a corporation, by delivering to said M. P. Freeman, president of the Santa Cruz Valley Water Storage Company, a corporation, and each of them personally, a true copy of the within writ, at the time and place as follows: As to M. P. Freeman, at Tucson, county of Pima, Arizona, on the 6th day of March, A. D. 1893. As to .

I hereby acknowledge service of the within petition this the 8th day March, 1893.

MATT. G. REYNOLDS
U. S. Attorney, Court of Private Land Claims.

This writ therefore, returned as the law directs, this day
of A. D. 189 .

R. H. PAUL, *Marshal.*
By ———, *Deputy Marshal.*

Marshal's fees: Service, defendants, at \$2, \$; mileage,
miles at 6c. going only, \$; total, \$.

Paid by .

(Endorsed:) Gen. No. 6. File No. 4. U. S. Court of Private Land Claims, district of Arizona. Maish & Driscoll, plaintiffs, versus United States et al., defendants. Summons. Filed this 27th day of June, A. D. 1893. James H. Reeder, clerk. By R. L. Long, deputy clerk. Rochester Ford & Charles Weston Wright, of Tucson, A. T., attorney for plaintiff".

11 That thereafter, to wit, on the 27th day of February, A. D. 1894, the attorney for the United States filed an answer to the foregoing petition, which answer is as follows, viz:

UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Arizona district.

MAISH & DRISCOLL, PLAINTIFFS,

vs.

UNITED STATES ET ALS., DEFENDANTS.

} No. 6.

Comes now the United States and for its separate answer to the petition filed in the above-entitled cause, says:

That as to the truth of the allegations contained in said petition, it has no knowledge or information sufficient to enable it to form a belief, and demands that plaintiffs be put to their proofs.

Further answering, it says: That said claim as asserted and of which confirmation is asked according to the survey and plat filed in this cause,

conflicts with what is known as the Sopori and Buena Vista grants now pending before this court.

That if such claims should be confirmed as prayed and the boundaries established as claimed and asked by plaintiffs, the conflicts are material, and the United States therefore pleads a defect of parties defendant.

Defendants aver and plead a misjoinder of causes of action in this petition with what is known as the Canoa and Buena Vista grants, which are sought to be confirmed under the allegations in one petition, when upon a trial of said case, severance must be had for the reason that they do not depend upon the same grant title nor do they depend upon the same survey nor are the same facts applicable to both claims.

It therefore asks for severance, and that plaintiffs be required to file distinct and separate petitions if they desire to assert each claim.

MATT. G. REYNOLDS,

U. S. Attorney.

(Endorsed:) F. No. 13. Answer. Filed in the office of the clerk Court of Private Land Claims, Febr. 27, 1894. Jas. H. Reeder, clerk. By R. L. Long, deputy.

13 And be it further remembered that on the 19th day of March, A. D. 1894, being a day of the regular term of the court held in Tucson, Arizona, the following proceedings were had:

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| MAISH & DRISCOLL, PLAINTIFFS, | } No 6. Canoa and Buena Vista grants. |
| <i>vs.</i> | |
| UNITED STATES ET ALS., DEFTS. | } |

In this cause the plaintiffs, by their attorney, Rochester Ford, esq., submits to the averment in the answer of the U. S. attorney that there is a misjoinder of the causes of action in the petition on file herein, as the Canoa and the Buena Vista grants are sought to be confirmed under one petition, when, upon the trial of said cause, severance must be had for the reason that they do not depend upon the same grant title, nor upon the same survey, whereupon the court granted the plaintiffs permission to file separate petitions in each case.

That on the 1st day of March, 1894, the plaintiffs herein, by their attorneys, Charles Weston Wright, esq., and Rochester Ford, esq., filed in the office of the clerk their amended petition, which is in the words and figures following, to wit:

14 In the Court of Private Land Claims.

UNITED STATES OF AMERICA, *Territory of Arizona*, ss:

| | |
|--------------------------------------|---|
| FREDERICK MAISH AND THOMAS DRISCOLL, | } |
| partners as Maish & Driscoll, | |
| <i>vs.</i> | |
| THE UNITED STATES. | } |

Petition of Frederick Maish and Thomas Driscoll for the confirmation of their title to the San Ygnacio de la Canoa private land claim.

Come now these petitioners, Frederick Maish and Thomas Driscoll, by their attorneys, and by leave of court first had and obtained, file this

their amended petition herein, and respectfully represent to this honorable court as follows:

That they are, and since the year 1871 have been, partners residing and doing business in the city of Tucson, Territory of Arizona, under the firm name and style of Maish & Driscoll.

That as such partners they are the owners in fee, holders, and possessors of that certain tract of land lying, being, and situate in the county of Pima, Territory of Arizona, commonly known and called the San Ygnacio de la Canoa grant or private land claim, which tract of land is more particularly hereinafter described.

That they own in fee, hold, and possess such land under and by virtue of a certain instrument of writing now and hereafter designated as and being

15 a grant title, bearing date the 2nd day of February, 1849, duly made and executed by Antonio Teran y Peralta, treasurer-general of the free and sovereign State of Sonora, in the Republic of Mexico, in the name of the sovereignty of said State, under and by virtue of article 11 of the general sovereign decree No. 70, passed on the 4th day of August, 1824, by the Sovereign Constituent Congress of the United States of Mexico, which article concedes to the States of the Republic of Mexico the rents or revenues which by said law are not reserved to the General Government, one of which revenues is the vacant lands within the respective States, which lands in consequence belong to such States; for the disposition of which lands under said decree the Constituent Congress of the State of Sonora and Sinaloa passed a law numbered 30, bearing date of the 20th day of May, 1825, and other decrees relative thereto by other successive legislatures, which decrees are embodied in sections 3, 4, 5, 6, and 7 of chapter 9 of the Organic Law of the Treasury, No. 26, bearing date the 11th day of July, 1834.

That under and by virtue of such laws and decrees such proceedings were thereunder lawfully and regularly had as that the said Treasurer-General of the State of Sonora, Republic of Mexico, in the name of the sovereignty of said State, duly and regularly and for a good and valuable consideration, to wit, the sum of two hundred and fifty dollars, and for the other good and valuable considerations in said grant title set forth and described, did, on the said 2nd day of February, 1849, sell and convey in fee to Tomas and Ygnacio Ortiz the land hereinbefore mentioned and more particularly hereinafter described, known as the San Ygnacio de la Canoa grant.

That the proceedings resulting in the issuing of the title to the lands embraced in said grant were instituted by a petition dated September 6th, 1820, addressed to the Governor Intendent, who was then
16 the officer of the Spanish Government in charge of and having exclusive jurisdiction in the matter of the sales of the public lands in the jurisdiction of Tubac, in which jurisdiction the lands thus petitioned for were situated; that proceedings of survey, valuation, and publication were taken on this petition as required by the instructions and laws of the Royal Ordinances of Intendentes, of December 4, 1786, and that on December 15th, 1821, the tract petitioned for and as surveyed according to the calls of the expediente thereof was sold by the officers of the Mexican Republic to Tomas and Ygnacio Ortiz, the grantees therein, for the

sum of two hundred and fifty dollar', which amount was thereupon paid by said grantees into the National Treasury of the Mexican Republic. That the said sale was on December 17th, 1821, approved by the Provincial Junta de Hacienda, or Provisional Assembly of the National Public Lands, and on the same day was referred to the Supreme Junta of Royal Hacienda for its approval; that before it could be approved the said Supreme Junta of Royal Hacienda was abolished, and no further proceedings were taken thereon till January 30, 1849, when the said grantees applied to the Treasurer General of the State of Sonora for the issuance to them of the formal title to the said lands for which they had made payment as aforesaid, whereupon there was issued to them on said 2nd day of February, 1849, the final testimonio or evidence of title of said grant, and the same was thereupon duly recorded on page 75 of the book of Toma de Razon for said year 1849.

That the map hereto attached and made a part of this petition as Exhibit A correctly represents as near as may be the lands embraced within the said grant, the boundaries thereof and where the same are situated.

17 That the original grant title or instrument of writing by which said grant was conveyed to the aforesaid grantees is not in the possession or under the control of your petitioners, but is, together with other records and papers relating to said grant, in the possession and custody of said United States surveyor-general of the Territory of Arizona, at the city of Tucson; that for this reason the said original document constituting and creating said grant, together with transcripts or copies thereof, can not be herewith presented or delivered, nor can copies of said grant be now furnished as required by the rules of this honorable court, but when by the order of this court the said original title papers are procured, your petitioners will furnish the necessary and requisite copies of said instruments in the Spanish and English languages.

That under the provisions of the 8th section of the act of Congress, approved July 22, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and under acts amendatory or in extension thereof, or supplemental thereto, your petitioners filed on September 2, 1879, in the office of the United States surveyor-general for the Territory of Arizona, their petition asking for the confirmation to them of the said San Ygnacio de la Canoa grant, accompanying which petition were the original title papers of said grant; that thereupon the United States surveyor-general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor-general, in his official report under date of February 20, 1880, to Congress on

18 said grant, reported that the original expediente of the same, containing forty-five pages, was found in its proper place in the archives of Mexico; that the writing was on the corresponding-stamped paper; that the signatures to the several papers forming the expediente are genuine, and that the said title was duly recorded in the entries of the Book of Toma de Razon for the year 1849. Your petitioners further represent that the report of Special Agent Hopkins fully

established the genuine character of the original title papers of such grant, and that the report of the said surveyor-general recommended the confirmation of said grant to your petitioners, but that no action was taken thereon by Congress or by any authorities of the United States.

That the statements in said reports of said Hopkins and said United States surveyor-general are true, and that said grant is, and at the time of the execution of the treaty, known as the Gadsden Treaty, was located and duly recorded in the archives of Mexico.

That your petitioners own, hold, and possess said grant under and by virtue of diverse and sundry mesne conveyances made by the original grantees of said grant and their grantees to your petitioners, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof your petitioners will furnish to this court at such times and upon such terms as the court may direct.

That the original grantees of said grant were Mexicans and citizens of the Republic of Mexico, and that at the time of the Gadsden Treaty the owners of said grant were likewise Mexicans and citizens of the Republic of Mexico.

That all the steps and proceedings in the matter of the petition, survey, appraisement, offers, auctions, and sales of said grant, and paym't therefor were regular, complete, and lawful, and vested a perfect
19 and valid title in fee thereto in the said grantees of said grant, and that said grantees at the time went into the actual possession, use, and occupation of said grant, and erected the proper monuments, and that said grantees and their descendants and legal representatives have continued ever since until the present time in the actual possession, use, and occupation of the same, and are now seized and possessed in fee thereof; that said grant document is a complete, definitive grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years, without good reason, which abandonment would subject the tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed, and that your petitioners are entitled to a confirmation of said grant in accordance with the metes and bounds set forth in the original survey and grant of the same, which metes and bounds your petitioners aver are correctly represented by the map of said grant hereto attached.

That the lands claimed by your petitioners are all the lands embraced within the original survey of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant filed herewith. (Said map appears hereafter as Exhibit B.—Clerk.)

Your petitioners further allege, on information and belief, that there are no persons in possession of any part of said grant otherwise than by the lease or permission of your petitioners.

Wherefore your petitioners pray that the validity of their said title may be inquired into and decided, and that the title of your petitioners to said lands be declared valid; and your petitioners pray for such other

and further relief as to the court may seem meet and proper in the premises.

CHARLES WESTON WRIGHT,
ROCHESTER FORD,
Attorneys for Petitioners.

(Endorsed:) Frederick Maish & Thos. Driscoll, partners as, vs. U. S. Amended petition. Filed March 1, 1894. Jas. H. Reeder, clerk. By R. L. Long, dep.)

20 And that thereafter, to wit, on the 15th day of August, 1894, the following order was made and entered, viz:

It is hereby ordered that in all cases pending in the district of Arizona plaintiffs are hereby ordered to file with the clerk of the court of that district, on or before September 20th, 1894, all original documents upon which they expect to rely in establishing title in the original grantees, together with three copies and three translations of the same. If the original documents are not in their possession or under their control, then certified copies of the same shall be filed.

It is further ordered that all mesne conveyances, together with copies and translations, shall be filed within said time, and an abstract of deraignment of title from the original grantee to the plaintiffs shall be served upon the United States attorney on or before the 25th of September, 1894, and the clerk is hereby ordered to enter this order of record and to mail to counsel in each case a copy of this order.

JOSEPH R. REED, *Chief Justice.*

SANTA FE, Aug. 15, 1894.

Entered of record in Journal 1, page 73, and copy mailed plaintiffs' attorneys.—Clerk.

21 And be it further remembered that thereafter, to wit, on the second day of April, A. D. 1895, the same being the 14th day of the March term, 1895, held in the city of Tucson, Arizona, this cause came on regularly for trial. Matt G. Reynolds, esq., attorney for the United States, and Rochester Ford, esq., and C. W. Wright, esq., appearing for the plaintiffs, Maish & Driscoll.

On motion, the court ordered that the Sopori Land and Mining Company be made a party defendant hereto, whereupon Robert B. Lines, esq., appeared for said company.

The court ordered that the U. S. surveyor-general of Arizona deliver to the clerk of this court all the papers on file in his office relating or pertaining to the claim commonly known as the San Ygnacio de la Canoa claim, taking his receipt therefor.

The trial not being concluded, the same was continued on the following day, and on the 4th day of April, 1895, after argument by counsel, the matter was submitted to the court for decision, and was by the court taken under advisement.

The evidence, both oral and documentary, as offered and introduced on the trial, is as follows, viz:

22 In the Court of Private Land Claims, District of Arizona,
April, 1895.

| | |
|--|--|
| MAISH & DRISCOLL, PETITIONERS | } Involving the title to the land claimed by the "San Ygnacio de la Conoa grant." |
| <i>vs.</i> | |
| THE UNITED STATES AND THE SOPORI LAND and Mining Co., defendants. | |

*Transcript of the evidence offered and proceedings had in open court in the
above-entitled cause on the 2nd & 3rd days of April, A. D. 1895.*

YGNACIO BONILLAS, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination by Mr. FORD:

Q. Please state your name, age, residence, and profession.

A. Ygnacio Bonillas; thirty-seven years old; residence, Magdalena, Sonora, Mexico; profession, mining engineer and surveyor.

Q. What education have you had in your profession, and what experience, and where?

A. I took a course in mining engineering and surveying in the Massachusetts University of Technology, in the city of Boston; I have practiced surveying and mining engineering since 1883, both in this country and in Mexico.

Q. Are you familiar with the Spanish language, and do you translate Spanish into English and English into Spanish?

A. I do.

Q. State with what proficiency you do it?

A. The Spanish language is my native tongue; I understand it thoroughly.

Q. What experience, if any, have you had in surveying land claimed under Spanish and Mexican titles?

A. I have surveyed such lands off and on since I began the practice of my profession; from 1883 up to the present time.

Q. Have you surveyed many or few?

A. I have surveyed many such grants.

23 Q. Where were such grants located?

A. Both in the State of Sonora and Territory of Arizona.

Q. Did you ever make a survey of the private land claims, known as the San Ygnacio de la Conoa, in Pima County, Arizona Territory?

A. I did.

Q. Please state from what data you made the survey, how and when you made it, and the results of it.

A. I believe I took my data from the survey—from the testimonio. I believe I said in my report where I took it from [looking at his report]; from the testimonio filed in the surveyor-general's office.

Q. Before going into that, I will ask you another question. Do you know whether there is in the archives at Hermosillo, State of Sonora, Mexico, an expediente of the San Ygnacio de la Conoa grant?

A. I made an examination of the archives for that purpose, and I took notes [referring to notes]. Yes, sir; there is an expediente in the archives of the treasurer-general of the San Ygnacio de la Conoa.

Q. Will you please state the contents of that expediente as far as you examined it?

A. The grant is for four sitios of land; the petition was addressed to the "Senor Governor Intendant," dated September 6, 1820; admitted and ordered that a survey be made, by Intendant Cordero, at Arispe, May 29, 1821, and the receipt for the payment of the money, by Escalante and Fuente, dated December 17, 1821. On the back of the expediente was the note that the title was issued, signed by Deran, with his rubrica.

Q. (By Mr. REYNOLDS.) Any date given to that instrument?

A. No; that is all the note.

By Mr. FORD:

Q. What kind of paper is that expediente written on?

A. As far as I am able to say, it is written on duly stamped paper.

Q. Did you examine and compare the signatures of Escalante, Fuente, Deran, and the other signatures with similar documents? And if so, state whether or not, in your opinion, they are genuine.

A. I did compare them and they are very much the same signatures that are on other documents, to the best of my knowledge.

Q. And are these signatures, in your opinion, genuine?

A. I think they are.

24 Q. You may now state how you made the survey.

A. I took my notes for the survey from the testimonio, or title papers of the grant, which document is on file in the office of the surveyor-general, at Tucson, Arizona. The initial or starting point is described as being established at Paraje de la Conoa, that being the starting point. [Interrupted.]

By Mr. REYNOLDS. Instead of going into detail, as we have no objection to the survey, or that it has not been made according to the title papers, just let him state that he made the survey according to the title papers.

By Mr. FORD:

Q. Please state whether or not that map which you now have in your hand, marked "Map San Ygnacio de la Conoa, private land claim, situated in Pima County, Arizona, surveyed by Y. Bonillas, November, 1893," correctly represents the tract of land called for in the testimonio as the San Ygnacio de la Conoa grant, according to the landmarks set out and described in the title papers.

A. Yes, sir; I found every monument called for in the title with the exception of the south centre monument, which I could not find, and I understand that it was established in the valley of the river, and I have no doubt that it was destroyed; but I found the southeast and southwest corners, and I connected those two points by one straight line.

By Mr. REYNOLDS:

Q. How much is called for—four leagues?

A. Yes, sir.

Q. What is the area which you found?

A. I have the area which I found within these monuments; it is 46,696.2 acres.

Q. That map about which you have testified was made from your notes?

A. Yes.

By Mr. REYNOLDS. I was misled about the matter. Instead of standing on my admission, you had better go into the subject of the survey. I withdraw my admission.

By Mr. FORD. Certainly. That is perfectly satisfactory.

By Mr. FORD:

Q. I show you a paper endorsed "La Conoa original title papers, filed surveyor-general's office, Arizona, July 17, 1880, 2.30 p. m.," pur-
25 reporting to be the original titulo of the San Ygnacio de la Conoa, signed by Antonio T. y Peralta, and ask you to examine the signature and state whether or not in your opinion that signature is genuine, basing your answer upon examinations that you have made of the records.

A. I am not very *afmil'ar* with that signature. I have seen it before in some of the documents in the archives; it seems to be the same.

Q. You saw it in the expediente, did you not?

A. I do not remember exactly.

Q. Refer to your notes and see if you didn't.

A. I do not find that name in my notes.

Q. Examine the signature with reference to the same signatures that you have seen in other documents.

A. I think it is the same.

By Mr. FORD. We offer in evidence the translation of the original testimonio.

(Said document was thereupon marked "Exhibit A.")

Q. Now, I ask you to state, if you please, when and how you made the survey of which you have spoken, and the result of it.

A. I made this survey in the month of November, 1893. Before proceeding to make the survey I went to the surveyor-general's office and made an examination of this testimonio, and took notes from the original field notes of the survey. I then proceeding to the Conoa, which is Maish & Driscoll's ranch, in company with Don Jesus Maria Elias and Jose Maria Cu ro, two persons who are perfectly famil'ar with the country about La Conoa, for the purpose of identifying some of the places mentioned in this survey, and of the original starting point. While I was there these two gentlemen, as well as Mr. Kitchen, pointed out to me the place called La Conoa, which was already known to me for many years back. They pointed out exactly the same place called the "Paraje de la Conoa." That was a point on the highway between Tucson and Tubac. From this starting point, which is on the east bank of the Santa Cruz River, on the old road, the title papers state that 378 cordeles, or cords, were measured to the north, in the direction of the north, along the public highway, which measurement ended at the place called Sagarito. The place Sagarito is a well known point; it is on
26 the public highway, and I have known it since 1870. The title papers state that the measurement ended at that place, and that

there was standing at the time a saguaro (giant cactus), and that place was designated as the place for the north center monument. We next set off in the direction of the west. They then measured from this north centre monument fifty cords, which terminated at the foot of a single hill, which stands alone, and its is covered with black rocks, and grown up with saguaro (giant cactus) and palo verdes. To the right of this hill there is a very low and small hillock, and the order was given that a pile of rocks be put on the top of that hill to make the northeast corner [interrupted]—

By Mr. REYNOLDS. You mean northwest corner?

A. Yes; the northwest corner. I went to the top of that hill, and I found the monument. I have no doubt it is the northwest corner as originally put there. Every point in the description is to be found there. From the saguaro there is this little hill rising there in the plains. When you go there, it is as stated in the description; to the right of it there is this very small hillock, and there is the monument, as stated. So I found the monument of the northwest corner. The northeast corner is said to have been established by starting from the same north centre monument at the Saguarito, and running in the direction of the east towards the point of the mountain called the Sierrita, or Cerrita del Puerto de los Muchachos. I inquired which was this chain of mountains, and these old gentlemen told me that is this chain of mountains that is to the east from the Saguarito, and that this call was a pass in the mountains which is called the "Puerto de los Muchachos," "The mountain pass of the boys." I took that direction, and they next state that the measurement ended in the valley, in the low ground, in the direction of the point of these mountains, and that a cross was made to mark the place of the northeast corner monument. Going in this direction, I found a very old monument, which is the only one to be found for two or three miles around. I looked all around and could not find any other, and I made up my mind that was the northeast corner monument. It is almost exactly in line with the north centre monument at the Saguarito, and this little hill which rises on the plain, and where the northwest corner is established. I then returned to the centre and tried

27 to retrace the survey as given in the original field notes. From the centre the west and the east centre monuments were established.

The west centre monument is said to have been established by measuring fifty cords from the initial starting point in the direction of the west along a gulch or ravine towards the Sierrita de la Tinaja. The measurement is said to have ended in a small gulch to the right upon a very low hillock, where a pile of stones was placed to marked the west centre monument. I had no trouble in finding out what was the chain of mountains called the Sierrita de la Tinaja. It is in the direction of the west from the starting place of La Conoa, and going across the river, across the valley, I found a gulch opening into the valley directly opposite. I followed this gulch; sometimes I would go in the gulch and then I would go out and look on both sides, and looking on the right side (north side) of the gulch, exactly in place on a little hillock, as described in the title papers, I found a very old monument; that is, fronting this Sierrita de Tinaja. I think that monument is the west centre monument of the grant. The east centre monument is said to have been established

by running fifty cords in the direction of the east, which measurement ended upon a low, extensive table-land or mesa, very clean and covered only with short grass, in front of where the height of the Santa Rita Mountains begins to decrease, there being on the upper side of said mesa to the right a gulch which continues towards said Santa Rita Mountains. Going in the direction of the east from the initial point there is such a mesa as described, a very low and very extensive mesa, which goes clear to the foot of the Santa Rita Mountains. To the right of the mesa there is a gulch that goes to the Santa Rita Mountains, and upon this mesa I found a very old monument, which answers in every particular the description of the calls of the title papers, and I took that monument as the east centre monument of the grant. The south centre monument of the grant is said to have been established by measuring twenty-two cords from the centre or the starting point towards the south, which measurement ended upon the line—boundary line—of the lands belonging to the military post of Tubac. The person making this survey was the military commander of the post of Tubac at the time, and states that *we* brought with him the original expediente, which was in the archives under his charge, so as not to encroach upon the lands of Tubac, and on the boundary line of those lands he caused a cross to be cut into a mesquite tree at the point where the monument should be established. This point I could not find; I suppose, it being so long ago, the mesquite has probably been destroyed, or something had happened; I could not find this point. The southwest corner is said to have been established by measuring fifty cords along the boundary line of these lands of the military post of Tubac, which measurement ended along some low hillocks, where a pile of rocks was placed to mark the place for the monument. This monument was known to the interested parties, to Mr. Maish, who was with me in the field, and instead of looking for it he simply showed it to me. It answers the description given in the title papers, and I took it as the southwest corner of the grant. Same with the southeast corner monument—was known to him. It is said to have been established along same boundary line of the lands of Tubac, upon a low mesa or table-land along a gulch known as "Timber Gulch" (Canada de la Madera). Mr. Maish showed me the monument standing on a low rocky mesa, as is described, between two branches of the gulch, and there is no doubt in my mind that it is the southeast corner monument. It is about the same distance from the centre as the southwest corner monument, and I took it as the southeast corner of the grant. So there are eight out of the nine monuments originally mentioned which I found and identified. I made the survey by triangulation. I measured a base line. I commenced then to measure. I used the centre monument as located, and placed flags at every one of these points—these monuments, and besides on some high peaks and high hills I established trigonometrical stations. I made angular observations to each one of these points from both ends of the base line, and by the well-known process of trigonometrical calculations I ascertained the distance between these points.

Q. Did you make a map of this survey?

A. Yes, sir.

Q. I hand you map endorsed "Map San Ygnacio de la Conoa, situated in Pima County, Arizona, surveyed by Y. Bonillas, November, 1893; area, 46,696.2 acres," and ask you what map that is?

A. That is the map that I made, and a copy of the map that I made of this grant.

29 Q. Does or does not that map correctly represent the survey made by you of this grant?

A. It does.

Q. According to the title papers of the grant?

A. Yes, sir; according to the title papers of the grant.

By Mr. FORD. We offer that map in evidence.

(Said map was thereupon marked "Exhibit B.")

Q. Did you, at Hermosillo, Mexico, examine a number of expedientes in the archives and make a memoranda of their contents?

A. I did; yes, sir.

Q. On what paper was each expediente, if you remember?

A. I examined a great number of them, and they were all on duly stamped paper. Some of them were on common paper, but this paper was duly habilitated.

Q. From what were your memoranda made?

A. From the original expedientes in the archives of the treasurer-general of the State.

Q. Is each of the expedientes which you examined contained in the printed catalogue of the expedientes, which catalogue was printed by the State of Sonora in 1869?

A. Yes, sir; every one of them.

Q. Did you examine the signatures; and if so, what was the result of your examination?

A. Of each expediente that I examined I considered them to be genuine, and they are so considered by the Mexican authorities.

Q. I ask you to state if the document which I show you has been compared by you with your original notes, and as to whether or not it correctly states the facts in regard to the expedientes which you examined, as testified to before?

A. Yes, sir; it is a copy of the substance of the notes which I have made. I have examined it carefully and made some corrections where it didn't agree with my notes.

By Mr. FORD. We offer that in evidence.

(Said document was thereupon marked "Exhibit C.")

This is to show that action was taken in many grants similar to the Conoa, and that it was the custom of these officials of the Government to proceed in the making of grants just as they did in this grant.

30 By Mr. REYNOLDS. I desire to enter an objection, for the reason that this is not the proper manner or proceeding to establish a custom, nor can an official *you* has undertaken to exercise official authority and vest in the grantee any of the public domain originate a custom or establish a custom that is in direct violation of the law under which he acts.

No ruling.

Q. I will ask you, Mr. Bonillas, whether you found in the archives of the treasurer-general of the State of Sonora, at Hermosillo, a letter signed by Jose Maria Mendoza, dated Arispe, November 20, 1830, and whether or not the paper which I hand you is a correct translation of the same?

A. It is a correct translation. I have looked it over and compared it with the original notes that I took at the time and corrected it.

Q. You have the Spanish copy of it?

A. Y's, sir.

Q. State whether or not you found other letters from same persons similar to this; and if so, describe them.

A. I found the same letter, but with reference to different grants, addressed to Francisco Robles, referring to the Los Petores; this same letter addressed to Francisco Maria Grande in regard to his Terrenate.

Q. When was that land registered?

A. The Los Petores was in 1821; the Terrenate was in 1822.

Q. All these letters [interrupted]—

A. There are others. The same letter was addressed to Francisco Narbona and Don Agustin Borano concerning the grant of Batana, which had been registered, I believe, in August, 1822.

Q. I will read one of them. [Reads document marked "Exhibit DD."]

Q. You have seen the signature of Jose Maria Mendoza many times?

A. Yes, sir; a great many times.

Q. What do you say as to the signature on that document, of which that is a translation; was it or not genuine?

A. I have no doubt that it was genuine.

By Mr. FORD. I offer in evidence a translation of that letter.

(Said translation was marked "Exhibit D.")

I also offer in evidence a copy of the certificate of Mr. Aguilar, 31 treasurer-general of the State of Sonora, Republic of Mexico, given at Hermosillo on the 5th day of February, 1895.

(Said document was thereupon marked "Exhibit E.")

I also offer in evidence certificate of Aguilar, treasurer-general of the State of Sonora, which certifies to a certificate given by Jose Maria Mendoza on the 2nd of May, 1831. The certificate of Aguilar is dated at Hermosillo on the 24th of April, 1894.

(Said document was thereupon marked "Exhibit F.")

This is offered as a statement or admission by the chief federal officer of the Republic of Mexico in the year 1831; that the public lands had been sold, as stated, and that at this date, 1831, he received payment, which was for land sold in December, 1824.

Court at this point took an adjournment until to-morrow, Wednesday, morning, at 10 o'clock a. m.

WEDNESDAY MORNING, April 3rd, 1895.

Court met pursuant to adjournment. The trial of this cause was proceeded with, all being present as on yesterday.

By Mr. FORD. I offer in evidence translation of the certificate of the treasurer-general of the State of Sonora.

(Said document was thereupon marked "Exhibit G.")

We offer in evidence a translation of the certified copy by the treasurer-general of the State of Sonora of the entry in the book of Toma de Razon, of the San Ygnacio de la Conoa grant.

(Said document was thereupon marked "Exhibit H.")

YGANCIO BONILLAS recalled for further examination by the petitioners.

Direct examination by Mr. FORD:

32 Q. Have you ever seen any of the original titulos of any of the grants named in the memoranda which you made and which was offered in evidence yesterday [referring to Exhibit C]?

A. I have some of them.

Q. Please state those you have seen and under what circumstances.

A. I have had in my hands the testimonio of the grant called Alamo de Sevilla. I was appointed to make the survey of that grant, and I did survey it in 1885, I think.

Q. For whom did you survey it?

A. I surveyed it on the petition of the owners of the grant, the Elias'.

Q. Do you know whether that grant was then recognized as a lawful title, and whether the parties were in possession at that time claiming under that title?

A. It was recognized as a good title, and the owners were in possession of the grant.

Q. Have you seen the title papers of any other of the grants that you have testified about?

A. I have seen, and had in my hands also, the certified copy of the testimonio of the Batana grant. This is a grant situated in the district of Arispe, and I was making a survey of quite a number of grants there, and I had a certified copy of the testimonio of this grant, and I made a survey of it—that is the cabida legal of the grant; it calls for four sitios. I established the four corner monuments according to the calls of the title.

Q. Do you know whether or not that was recognized as a valid title, and whether the parties are in possession claiming under that title?

A. Yes, sir.

By Mr. REYNOLDS. I wish to enter an objection. As to whether it was recognized as being a valid title by Mexico has nothing to do with the validity of this grant; it can recognize anything it wants to, whether it is valid or invalid, but such recognition can not make this a valid title according to the laws and stipulations of the treaty.

No ruling.

Q. Was there any other grant among those about which you have testified?

A. Yes, sir. The "Cuchuta;" this is a grant for eight sitios. I also had a certified copy of the testimonio in my hands. I made a survey of that grant, both of all the lands included within the old monuments and marked each, but also placed monuments and marked the cabida legal.

33 Q. Do you know whether or not that is recognized, and whether the parties were in possession and claiming title in that grant?

A. The parties were in possession and the Government recognized the cabida legal.

Q. Did the Government recognize the cabida legal of the other grants?

A. Yes, sir. In the Batana and Cuchuta they would have recognized the demasias, but the owners didn't want it; and in the Alamo de Sevilla the grant called for four sitios, and there were 23½; the Government issued title for the demasias and recognized the cabida legal.

Cross-examination by Mr. REYNOLDS:

Q. Mr. Bonillas, in the grants that you speak of and about which you have testified as having been surveyed by you and recognized by the Mexican Government, did those grants have any demasias?

A. Yes, sir; they all had them.

Q. Did you survey these demasias?

A. I did in the case of the Alamo de Sevilla.

Q. What you call the cabida legal, that is the amount of land to which the title had passed?

A. Yes, sir.

Q. Included in the title?

A. Yes, sir.

Q. Then the land which was not included in the title, but was included within the natural objects or monuments which the parties were claiming, or excess, was required to be denounced by the party who claimed the cabida legal and paid for by the party claiming it? [Interrupted.]

A. Yes, sir.

Q. (Continuing.) And if he did not do it, then it was subject to denouncement or claim by anybody else who might want it?

A. Yes, sir; with this difference, that the party having possession and owning the grant had quite a number of privileges; he could have acquired the demasias by paying one-half of the tariff price for the public lands. In case anybody else petitioned for this demasias, then the party owning the land was still entitled to acquire them, but only by paying the full tariff price, in which case one-half of that price went to the Government and the other half to the party who might make the denouncement.

34 Q. Take this grant now, the grant on trial, taking the in'tial point as you have established it, take the courses and distances as giving therein respectively—not the monuments—would it not make about four sitios?

A. It would make four sitios exactly.

Q. Then within the area of the Conoa grant, as surveyed by you, there are a little more than ten sitios, isn't there?

A. It would be ten sitios and 76/100.

Q. If these title papers were given you, you would say under the custom of Mexico, or the law, or whatever it is, you would say that this title covered four sitios, wouldn't you?

A. No, sir; I would say that the cabida legal was four sitios and the demasias was six and a fraction.

Q. Six or seventy-six hundredths?

A. Yes, sir.

Q. This list that you furnished Mr. Ford, and which was offered in evidence (referring to Exhibit C), does that contain sufficient data? I notice you don't give in the second one—the Batana; you don't give the name of the officer who is supposed to have issued the title on May 25, 1825.

A. That is the contents of my notes. My notes in full ar' "petition addressed to Intendente Bustamante; admitted and ordered on August 16, 1822, for survey and other proceedings; receipt for payment signed

by Fuente and Gonzales October 20, 1822; on expediente the following, in handwriting of Riesgo, note on 15th of May, 1825, title was issued."

Q. But this expediente, or rather this note there, doesn't state that Riesgo issued the title?

A. No' the way it is worded; but he signs it and was the officer at the time issuing these titles.

Q. Did you testify in the Aribac case, Mr. Bonillas?

A. I did, sir.

Q. Are these grantees in this Conoa case, Tomas and Ygancio Ortiz, also grantees in the Aribac case?

A. So I understand.

Q. Now, in the grant on trial—the Conoa—you spoke of the sertificate signed by Deran. What was the first note on that grant, or on the expediente rather, endorsed by Deran?

A. Note that reads "title was issued."

Q. Does it give the date on which the title was issued?

A. Not according to my notes. I simply (interrupted)——

Q. Did you find any other endorsement on it by Deran?

A. On the expediente?

35 Q. Yes, sir.

A. Not that I can remember, or tell from my notes.

Q. Does not the endorsement show in the certificate of Denar that it was noted in the book of Toma de Razon?

A. I can't now tell you whether there is a note to that effect or not. I did examine the book of Toma de Razon.

Q. You found the book, and afterwards found the endorsement in the expediente to the effect that it had been noted in the proper book of Toma de Razon, in the proper place in the archives?

By Mr. FORD. I would suggest in either case the note would not be found in the expediente, but in the titulo.

Q. You did find in the proper place in the Toma de Razon a note similar to the notes that you have seen and that have been introduced in evidence here?

A. I found a note in the Toma de Razon reciting that title had been issued, giving the date.

Q. That note was sufficiently specific to enable you to identify this grant as far as to tell what grant was made, where it was granted, who was the grantee, and the amount of money paid?

A. No, sir. Upon the Toma de Razon there is nothing about the amount of money that had been paid. The book of Toma de Razon, on page 79 [referring to notes and reading], "2nd of February, 1849, title to grant was issued for four sitios for stock-raising, raising of cattle and horses, in favor of Tomas and Ygnacio Ortiz, included in the place called San Ygnacio de la Conoa, jurisdiction and Precidio of Tubac, said persons being residents of said place of Tubac." Signed by Deran, rubrica.

Q. The date of that is 1849?

A. Yes, sir.

Q. How many grants do you find similar to this that had been issued along in '20, '21, '22, and on to '25, which had a certificate of Jose Maria Mendoza, like those which were read in evidence this morning and yesterday evening, attached to them?

A. I will have to refer to my notes. I think every one, from what I can see here covering land, had a certificate of payment being made, although—

36 [Can't transcribe without assistance of the witness—few lines.]

Q. Do you know how many grants there are in the State of Sonora made between 1820 and 1849?

A. No, sir; I do not.

Q. Large number, weren't there?

A. Yes, sir.

Q. There were a large number made between 1820 and 1830?

A. I do not know; but I know there were a great many grants made in 1833.

Q. You have examined nearly all of these grants in Arizona called intendente grants, grants commencing in 1812 and 1820, and which were perfected or claimed to have been perfected in 1825, 1833, and 1849?

A. I have examined some.

Q. Did you find attached to a single one of these a certificate such as this that I have called your attention to?

A. I do not remember.

Q. Wouldn't you, if such certificate was attached to one of those grants, a certificate written by Jose Maria Mendoza, wouldn't you certainly have noticed it?

A. I don't think so.

By Mr. FORD. We admit that there are none.

Q. In examining the entries in the book Toma de Razon, isn't it the general rule, according to your knowledge, the amount of money for which the grant was sold is also designated in the entry?

A. I don't remember of any case.

Q. Did you examine with reference to this especially?

A. The Toma de Razon simply states or gives the date the title was issued, the names of the persons to whom the grant was made, the area of the grant, the jurisdiction in which it is located. That's about the extent of the entry.

Q. And the general name by which the grant is known?

A. Yes, sir; the name of the grant.

Redirect examination by Mr. FORD:

Q. These certificates that you have referred to, and the various letters written by Jose Maria Mendoza about which you have testified, were written, were they not, because of the fact that part of the fees had not been paid at the time of these letters?

A. Yes, sir.

Q. The fundo legal and demasias about which you have already testified exists under the law of 1863, does it not?

A. Yes, sir.

Recross-examination by Mr. REYNOLDS:

Q. Mr. Bonillas, the Government of Mexico, so far as your examination of these titles go, didn't recognize, and didn't so construe it, that the title had passed for any more land than the party had bought, although he might be claiming more land within the natural objects or boundaries, and that was the reason for the "Demasias" law?

A. In case where title was issued for a determined area I think that was so, but in the case where the title was issued for the amount within the boundaries, for the land included within the boundaries, there was no demasias in such a grant.

Q. That's all.

38 It is stipulated and agreed that the printed catalogue entitled "Catalogue of Titles and Expedientes of Lands in the States of Sonora and Sinaloa," which exist in the archives of the treasurer-general of the State of Sonora, printed by the State of Sonora, at Hermosillo, in 1889, contains correct statements, so far as such statements go, regarding expedientes on file in said office of the treasurer-general.

By Mr. FORD. The following extracts from said catalogue were offered in evidence on the part of the plaintiff:

(Clerk will here copy extracts so offered and which have been filed in this cause.

See pages of this transcript for catalogue.—Clerk.)

SANTIAGO AINSA, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination by Mr. FORD:

Q. What is your name, place of residence, and profession?

A. Santiago Ainsa; attorney at law; Tucson.

Q. You are familiar with the Spanish language?

A. Yes, sir.

Q. Is that your native language?

A. Yes, sir.

Q. Have you ever made an examination of various expedientes in the office of the treasurer-general in the State of Sonora at Hermosillo, Sonora?

A. Yes, sir.

Q. State whether or not among them you found the expediente of the grant entitled "The San Ygnacio de la Canoa grant?"

A. I did.

Q. Did you make an examination of that expediente?

A. Yes, sir; in April, 1893.

It is stipulated and admitted by the United States that the San Ygnacio de la Canoa is in its proper place in the archives of the office of the treasurer-general of the State of Sonora at Hermosillo, Sonora, and that the said grant is recorded in its proper place in the Toma de Razon, a book, in the office of said treasurer-general.

Q. Mr. Ainsa, did you find in the office of the treasurer-general a book of "Cargo y Dates" for the year 1894?

A. Yes, sir.

39 Q. State whether or not you found in that book an entry referring to the payment of money in 1849 on the extension of the title to the San Ygnacio de la Canoa grant.

A. Yes, sir. In the book "Libro Co on de Cargo y Data" for the year 1849 is found the following. Here is the translation of the same which I have made [interrupted]—.

Q. Please examine the certificate titulo of this grant, and state whether it is a correct translation of the entry which you copied from that book of Cargo y Data.

A. (After examining.) Yes, sir; I have examined it and it is a correct translation.

Q. How much is the amount?

A. Thirty dollars.

Q. Which was the fee for issuing the title?

A. The fees for issuing the title; yes, sir.

Witness excused.

By Mr. FORD. I offer in evidence the title of the San Rafael de la Zanja. I introduce this document and ask permission to have a certified copy filed in the place of it at the proper time.

By Mr. REYNOLDS. I object to it as incompetent, because it is with reference to another grant. The occupation that one grant can not prove the occupation of another.

It is admitted, subject to objection.

(Said document was thereupon marked "Exhibit A.")

CARLOS VELASCO, called and sworn as a witness on behalf of the petitioner, testified through the medium of the official interpreter as follows:

Direct examination by Mr. FORD:

Q. Will you please state your name, age, and residence?

A. Carlos Volasco; 54 years old; residence, Tucson; occupation, newspaper publisher.

40 Q. Did you copy from the original documents in the archives of the government of Sonora, at Hermosillo, Sonora, the laws passed by the Congress of the State of Sonora and communications made by Congress?

A. Yes, sir.

Q. Have you with you the copy which you made from the third communication, dated May the 9th, 1825, from the office of the secretary of the State congress?

A. I do not know the date. [After referring.] Yes, sir.

Q. Do you know to whom that communication is addressed?

A. To the Governor of Sonora and Sinaloa.

Q. Is that the copy made by you, yourself, from the original document?

A. Yes, sir.

By Mr. FORD. We offer the original in evidence—a translation of that law—and the original will be left here in the custody of the clerk.

(Said document was thereupon marked "Exhibit I.")

Witness excused.

JESUS MARIA ELIAS, called and sworn as a witness on behalf of the petitioners, testified through the medium of the acting official interpreter as follows:

Direct examination by Mr. FORD:

Q. Please state your name and age.

A. Jesus Maria Elias, 67 years old.

Q. Where do you live?

A. At Tucson.

Q. Where have you lived?

A. I have lived at Tubac and at Soporí and at Tucson.

Q. Did you know Tomas and Ygnacio Ortiz?

A. I did know them.

Q. When did you first know them, so far as you can remember?

41 A. I knew them since I was old enough to know people, very young.

Q. Have you ever heard of a grant called the San Ygnacio de la Canoa?

A. Yes, sir; I know it.

Q. State whether or not Tomas and Ygnacio Ortiz ever claimed to own that grant?

A. The first knowledge I had of the matter was that the grant belonged to Tomas Ortiz.

Q. And when was this first knowledge?

A. About '43 & '44.

Q. Where was this grant situated?

A. On the Canoa?

Q. Yes.

A. It is situated a distance of about 5 leagues north of the Prísidio of Tubac.

Q. What, if anything, do you know about either one of the Ortizes being in possession of this grant, either by themselves or tenants?

A. In 1843 a man by the name of Pedro Quijada had his stock and cattle at Canoa. This man was married to a sister of Don Ygnacio and Tomas Ortiz.

Q. In the year 1844 said Pedro Quijada took out his cattle towards the town Imurec, towards the south. In the years 1847 and 1848 I knew four men with their families farming in the grant. I was by this farming place on two occasions, and from the conversations I held with these people I learned that they were there with the consent and permission of Tomas Ortiz. About '51 or '52 a son of Don Tomas Ortiz, named Jesus Maria Ortiz, was farming at the place close to the old ranch.

Q. If you ever heard any conversations in which either Tomas or Ygnacio Ortiz talked about or in regard to the San Ygnacio de la Canoa grant, state what you heard.

By Mr. REYNOLDS. I object to his stating what he heard from these men with reference to the occupation or cultivation of this grant as being a declaration of a party in interest in his own interest.

Question withdrawn.

42 Cross-examination by Mr. REYNOLDS:

Q. Are you the gentleman that was on the witness stand yesterday in the Soporí case?

A. Yes, sir.

Q. Your name is Jesus Maria Elias?

A. Yes, sir.

Q. Have you ever known, living in this town, about your own age—
66 or 67 years old—another Jesus Maria Elias?

A. No; not of that age.

Q. What is the age of the other Jesus Maria Elias that is living here?

A. He is about 47 years old.

Q. And your age is what?

A. 67.

Q. You testified yesterday that you had never given or made any affidavit or deposition in 1880 in the Sopori case, with reference to the Sopori grant?

A. I declared that I had no knowledge of those surveys, and that I did not know of those surveys being made in the Sopori.

Q. Didn't you testify on yesterday, when the deposition was handed to you of Jose Maria Elias' name signed to it—didn't you deny that you had ever given such deposition?

A. Yesterday, when the document was presented to me, signed by me, I acknowledged that it might be my signature—my handwriting—but I said that the declarations that I made in 1880 were to the effect that I had not seen those surveys made.

Q. Didn't you say on yesterday, during the trial of the Sopori case, when you were on the stand on behalf of the plaintiff, with the original deposition in your hands to which was signed the name Jose Maria Elias, deny that you had ever given any deposition in the case? Answer me yes or no.

A. I do not understand the question well. I do not understand the sense of the question.

Q. (To interpreter.) Explain it to him.

A. (After explanation made to witness by the interpreter.) A. Yes, sir; I deny it, because I did not know that I made declarations there in such terms. At the time I made the declaration I said just what I said yesterday, but it appears different there.

43 Q. Is that your genuine signature to the instrument or deposition which was presented to you yesterday—the name Jesus Maria Elias? [Showing witness a deposition of one Jesus Maria Elias, subscribed and sworn to before the surveyor-general of Arizona on the 30th of November, 1880.]

A. The name is my name, and as I said yesterday I say to-day—in my estimation it is my writing.

Q. Now, is your memory, your knowledge of the facts about which you testified, that Tomas Ortiz claimed this grant in 1843, as accurate as your testimony was yesterday?

A. I say this, so far as my deposition is concerned: That I did not know of any survey of the Sopori in 1848, and to the fact that I state that the signature may be my own, because the form of the writing is like my own.

Q. Now, you state that you saw a man on this grant in '43 and '44 with some cattl' and stock?

A. Yes, sir.

Q. What were you doing down there?

A. I was traveling from here to Tubac and to Sopori, where my parents lived.

Q. Did your parents live in Tubac?

A. They lived in Tubac and Sopori.

Q. Was the grant fenced?

A. No, sir.

Q. They were herding cattle all over the country, weren't they?

A. In 1843 and '44 cattle were turned loose everywhere, but in '47 and '49, thereabouts, when the Indians became very bad, cattle were driven towards the interior of the district of Magdalena and were herded in the daytime and put in corrals at night.

Q. In 1849 and '50 did Tomas or Ygnacio Ortiz, either one, live on that grant?

A. No, sir.

Q. Did they live there in '46, '47, or '48?

A. There were some families farming there, as I have stated, but the cattle had already been withdrawn.

Q. Was permitted to stay there in 1846, '47, '48, during the Apache trouble?

A. There were very many massacres, and it was dangerous; they were standing them as well as they could, as many others were doing in other parts of the country.

44 Q. That country was occupied and cultivated during the Apache troubles by isolated families, was it not?

A. These settlements were made by the people who by the necessities of making their living had to expose themselves to those dangers.

Q. But they did live there?

A. They lived there for two years; after that they went out.

Q. This man that was there in 1842 & '43, cultivating these lands; did he have his family with him?

A. No, sir; this man had these cattle and his stock.

Q. How long did he stay there with any cattle in 1842 & 1843?

A. I do not know how long he remained there with his cattle. I did not know when those cattle were brought up there. I saw them there, but I did not know how long before I saw them that they had been there.

Q. You never saw them but the one time?

A. No, sir; not only once; I saw them on different occasions, several occasions, as my father's parents lived at Tubac, and my grandmother, and I used to be taken back and forth, and in doing so I passed through the grant.

Q. Your recollection of this occurrence and the cattle on it and the claim of Ortiz to this grant is quite as good as your recollection of the survey of the Sopori grant, as you testified to in 1880?

A. One is as accurate as the others, and I am not putting any weight on my conscience in so declaring, with the understanding that my declarations concerning the Sopori are to the effect that I did not see any of the surveys being made there.

Q. That you are certain of now?

A. Yes, sir.

Q. Didn't you testify in the Sopori case, on the 24th day of November, 1880, before the United States surveyor-general, John Lawson, at which the following question was asked: "Question. Do you know when the said rancho was measured, in pursuance of the alleged proceedings under the Mexican Government for title?—Answer. I do; it was measured about ."

45 Answer. No, sir; I have not given such testimony.

Witness excused.

Mr. FORD. Plaintiff offers in evidence document endorsed "Dereignment of title to the Canoa grant, containing an abstract of the convey-

ances conveying the title to Maish and Driscoll, the petitioners to said grant."

To which it is stipulated may be received in evidence in lieu of the original deed.

By Mr. REYNOLDS. Yes; unless I find some of them have not been properly acknowledged so as to convey the title.

Mr. FORD. Certainly.

(Said document was thereupon marked "Exhibit J.")

By Mr. FORD. Offer in evidence a translation of a document, which translation it is admitted is a true translation of the original document which exists among the records of the treasurer-general of the State of Sonora, at Hermosillo, Sonora, and which is on the proper stamp paper and addressed to the treasurer-general and signed by Francisca Fernandes, widow of Captain Francisco Villaescusa, and Jose Elias, agent of Tomas Ortiz.

(Said document was thereupon marked "Exhibit K.")

We also offer in evidence the certificate referred to by Jose Toribio Minendes.

(Said document was thereupon marked "Exhibit L.")

We also offer in evidence a letter signed by Tomas Ortiz and addressed to his nephew, Jose Elias, dated April 20, 1853.

(Said document was thereupon marked "Exhibit M.")

And the petitioners rest.

46 For the United States:

By Mr. REYNOLDS. I desire to offer in evidence, and will have copies made, of a deposition of Jose Maria Elias in the Sopori Case, taken before the surveyor-general on the 29th day of November, 1880, and subscribed and sworn to before John Wasson, United States surveyor-general, with the seal of his office.

And the Government rests.

At this point court adjourned until to-morrow morning, at 10 o'clock.

WEDNESDAY MORNING, April 3, 1895.

By Mr. LINES. On behalf of the Sopori Company, who claim title to the Canoa grant by purchase, I wish to offer a few documents, if the court please.

I understand that the grant, title, and translation thereof have been offered in evidence.

I desire to offer, with the consent of Mr. Ford, a letter from Thomas Robinson to J. R. Bartlett, dated July 8, 1857, transmitting the original title papers.

(Said document was thereupon marked "Exhibit BB.")

Also letter from Surveyor-General John Wason to Edward M. Sheperd, attorney for the Sopori Land & Mining Company, dated December 16, 1880, stating, among other things, that he intended to make a supplemental report on the Sopori, but this report has not been filed, so far as can be found in the surveyor-general's office.

47 By Mr. REYNOLDS. The Government was not a party to this and objects to it, and insists that what the surveyor-general was going to do is absolutely incompetent and immaterial.

No ruling.

(Said document was thereupon marked "Exhibit CC.")

We offer the original deed from Ygnacio Ortiz to Francisco Villacusa, dated February 9th, 1849, for one-half of the Canoa ranch.

Mr. REYNOLDS. I object to the introduction of this deed as not properly acknowledged.

Mr. FORD. I object to it as not properly executed; not complying with the law with reference to the transfer of real estate.

(Said document was thereupon marked "Exhibit DD.")

By Mr. LINES. Also offer certificate of Matias Moran, notary public, dated June 4th, 1881.

By Mr. FORD. Objected to as incompetent, not being authorized by law and not being the proper way to prove signature.

(Said document was thereupon marked "Exhibit EE.")

By Mr. LINES. I also offer a certificate of Matias Moran which is an acknowledgment of deed of Juan Moreno as executor of will of Francisco Villacusa.

By Mr. FORD. Objected to as incompetent, for the reason that a Mexican notary public has no authority to certify a document so as to make it available and competent under the laws of the United States.

(Said document was thereupon marked "Exhibit FF.")

By Mr. LINES. Next, copy of deed of December 11th, 1854, from Tomas Ortiz to Fernando Rodriguez for one-half of the Canoa grant.

By Mr. FORD. I object to it because it is incompetent, 'eing a copy and not an original.

48 (Said document and translation of same was thereupon of-marked "Exhibit GG.")

Mr. LINES. Also offer copy of deed executed June 2, 1860, from Sylvestre Mowry, as attorney of said parties, among others Maria Astiazaran, transferring to the Sopori Land and Mining Company entire interest in the Canoa grant.

By Mr. FORD. Objected to because it is a copy and not the best evidence.

(Said document was thereupon marked "Exhibit HH.")

By Mr. LINES. I next offer a copy of a deed dated June 7th, 1866, from the Arizona Land and Mining Company to the Sopori Land and Mining Company for their interest in the Canoa grant.

By Mr. FORD. Objected to because it is a copy and not the best evidence.

(Said document was thereupon marked "Exhibit II.")

Case closed.

Argument by Mr. Ford for the petitioners. Mr. Reynolds for the United States.

Mr. Lines was given a reasonable time within which to file a brief on behalf of the Sopori Land and Mining Company.

I hereby certify that the above and foregoing twenty-seven (27) pages contain a full, true, and correct transcript of the evidence offered as stated, and the proceedings had upon the hearing of this cause, to wit, the case of Maish & Driscoll against the United States, involving the title to the property claimed as the San Ygnacia de la Canoa grant, in the Territory of Arizona.

LYMAN F. PARKER, Jr.,
Official Stenographer.

49

EXHIBIT A.

The part of Mr. Ygnacio Ortiz was sold to Captain Francisco Villascusa, according to the deed attached to the original at the conclusion.

B. (Seal.)

Titulo of grant issued in favor of Messrs. Tomas and Ygnacio Ortiz of four sitios of land, which embrace the place called San Ygnacio de la Canoa, in the jurisdiction of the presidio of Tubac and district of Ures.

50 No. 3475.

Third seal.

(Seal.)

Four reales.

Years of 1848

and 1849.

Furnished according to the articles 42 and 43 of the general decree of November 23, 1836, and the supreme disposition of the State government, dated February 10, 1848.

Copied from page 2 of the respective book.

J. M. Parra.

M. Monteverde.

Antonio Teran y Peralta, treasurer-general, empowered by the free and sovereign State of Sonora.

Inasmuch as article 11 of the general sovereign decree No. 70, dated August 4, 1824, conceded to the States the revenues which in said law the national Government did not reserve to itself, one of them being those of the lands of their respective districts, which therefore belonged to them, for the disposition of which the honorable congress of Sonora and Sinaloa passed the law No. 30, of May 20, 1825, as well as subsequent legislatures passed other decrees in the premises, whose dispositions are contained in sections 3, 4, 5, 6, and 7, of chapter 9, of the organic law of the treasury No. 26, dated July 11, 1834, said mentioned sale of lands being assigned anew to the State, which has continued and will continue to collect revenues (or taxes) by virtue of the general law of classification, dated September 17, 1846; and Messrs. Tomas and Ygnacio Ortiz, the former a resident of Tucson, and the latter of Tubutama, having petitioned this treasury for a grant of four sitios for the raising of cattle and horses, situated in the place called San Ygnacio de la Canoa, in the jurisdiction of the district of this capital, which sitios were surveyed in the year 1821 by the surveyor, Mr. Ygnacio Elias Gonzales, the corresponding proceedings were instituted literally as follows:

51 SENOR GOVERNOR INTENDANT:

Tomas and Ygnacio Ortiz, residents of the military post of Tubac, before you appear with due respect and say that in a northerly direction from said post, at a distance of about five leagues, there is situated the place called La Canoa, and we being possessed of some agricultural chattels, and having no place upon which to maintain them,

we register in the royal name of S. M. (L. D. G.) four sitios of land, which we propose to stock with cattle and horses, offering

2.

2.

No. 11025.

Fourth seal.

(Seal.)

One real.

(Same formula as before.)

to pay the just price at which they may be appraised; therefore we humbly pray and petition that you will be pleased to order, if you think fit, that the commanding officer of this military post proceed to the survey of the registered land, and take the other steps necessary for obtaining title and confirmation. We swear to be acting in good faith, etc.

Tubac, September 6, 1820.

TOMAS ORTIZ.

YGNACIO ORTIZ.

ARIZPE, May 29, 1821.

Presented and admitted without prejudice to any third party who may have a better right. The commanding officer of the company of Tubac will proceed to the survey of the land which the petitioner registers, calling the adjacent neighbors, and will appoint expert appraisers, who shall fix a just price, which shall be called out at auction for thirty days, and he shall solicit bidders and take all the necessary steps to bring the proceedings into such a shape as to present them to me in this special court, that the corresponding title may be issued to him.

CORDERO.

Act of compliance.

TUBAC, July 7, 1821.

The commands contained in the foregoing order of Brigadier Antonio Cordero, governor and intendant of these provinces of Sonora and Sinaloa, will be complied with, and upon summoning the interested parties and adjacent neighbors, if such there be, and accompanied by the necessary officers who will be appointed, I shall proceed to the place called La Canoá in order to carry out the measurement of the four sitios registered by Tomas and Ygnacio Ortiz.

Ygnacio Elias Gonsales, lieutenant commanding and subdelegate of the military post of the company of Pimas at Tubac, by these presents so determined, ordered, and signed with the necessary witnesses with whom he acts in the absence of a notary public, there being no such officer within the limits of this jurisdiction.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTO. SOTELO.

Notification to the parties.

On the same day, month, and year, I, the above-mentioned lieutenant commanding, Tomas and Ygnacio Ortiz being present, gave them notice

and communicated to them the foregoing order, of which they declared themselves informed, and considering themselves summoned they signed here with me and the witnesses in the customary form which I hereby certify.

YGNACIO ELIAS GONSALES.
TOMAS ORTIZ.
YGNACIO ORTIZ.

Witness: PEDRO RAMIRES.

Witness: JOSE MARIA SOTELO.

Appointment of officials, their acceptance and oath.

At the above-mentioned military post and company of Pimas at Tubac, on the said day, month, and year, I, the said commandant, in order to proceed to the measurement of the registered land and to the appointment of the necessary officials, appointed as counter the lieutenant of the presidio of Tucson, Manuel de Leon; as marker, Jose Antonio Figueroa, and as measurers Messrs. Juan Jose Oroasco and Manuel Castro, all residents of said Tubac, who, being present, accepted said appointment, each taking the usual oath in due form to act well and truly in their
53 respective capacities without deception, fraud, or pretense, according to their true knowledge and understanding, and those who knew how signed here with me, and for those who did not, I signed, with the necessary witnesses, in the customary form, to which I certify.

YGNACIO ELIAS GONSALES.
MENUEL DE LEON.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTO. SOTELO.

View and inspection of the land.

On the ninth day of July, 1821, being at the place called La Canoa, accompanied by the interested parties, the appointed officials, and customary witnesses, I ordered that an inspection and examination of the registered land should be first made, looking it over carefully in both directions (length and width), and after having examined it well I found it to be a tract containing a vast body of level ground, through the midst of which the river of this military post runs, although without water, there being many sandy places which interrupt the current at a distance of half a league from said post; and water runs in the river bed only during the rainy season when the rains are very heavy, and as soon as the rains stop the water ceases to flow in the river. Its vast extent is covered with different shrubs, as mesquites, China trees, tamarics, palo verde, giant cactus, and very few cottonwoods and willows. It contains pasture

(Seal.)

within all its circumference, although not in great abundance, and also some bunch grass, called sacaton, only along the low places, and I consider it may be of some utility for the raising of cattle and horses by

putting upon it a well with its corresponding stone cisterns and drinking troughs, which well can be constructed at the place callen La Canoa, where it is reported that water may be obtained at all times by digging in the dry river bed to a short depth. All of which is hereby submitted and certified by me together with the customary witnesses.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

Survey.

At the place of La Canoa (to which the name of San Ygnacio was given), on the 10th day of the month of July, 1821, I, the said lieutenant commanding and subdelegate of the military post and company of Pimas at Tubac in order to begin the survey of the land registered by Tomas and Ygnacio Ortiz of this place, delivered a well twisted and stretched cord to the appointed officials, and also a Spanish vara, whereupon, in my presence, there were measured

(Seal.)

on said cord fifty usual varas; this being concluded, there was tied to each end a wooden peg, and being on the spot which the interested parties had designated as a centre, and which was the very place called San Ygnacio de la Canoa, they went on measuring and mounting in a northerly direction upon the public road leading towards the presidio of Tucson, three hundred and seventy-eight cordeles, when they reached a place called Saguarito, where there stands a plant of that name, which remains as a boundary until a suitable monument can be erected; it bounds on this side for a distance of about five leagues on the mission of San Xavier del Bac. From this place they took a westerly direction and went on measuring and counting fifty cordeles, which brought them to a hill with many black rocks, standing alone, whose brow is covered with giant cactus and palo verde trees; on its right there stands, a short distance from it, a small and very low hillock, and on the top of the aforementioned hill I ordered a pile of stones to be placed as sign for a monument. Having returned to the boundary mark of the said Saguarito, they started from it, measuring and counting in an easterly direction, fifty cordeles, which brought them on the same low ground to a spot fronting the point of the mountain called "Sierrita del Puerto de los Muchachos," where a cross was erected as a sign for a monument. The survey of this side was thus finished together with the establishment of its corresponding corners; and having returned to the centre the cordel was stretched in a westerly direction, and they went measuring and counting along a canada facing the "Sierrita de la Tinaja," fifty cordeles, which brought them to a little knoll on the right side of the said canada, upon which was placed a pile of stones as a sign for a monument. Having

returned to the centre and taking an easterly direction, they started out measuring and counting again, fifty *cordeles*, at the end of which they arrived at a vast low table-land, very even and flat, covered only with low grass, in front of which the Santa Rita Mountains begin to slope, there being at the right hand side a canon which extends towards the said mountains. Here I ordered another pile of stones to be placed as a sign for a monument. With this the survey was suspended for that day, it being now sunset, to be continued on the following day. Thus I state, hereby, and with me signed the interested parties who could write, together with the measuring officials and witnesses, to all of which I hereby certify.

YGNACIO ELIAS GONSALES.
TOMAS ORTIZ.
YGNACIO ORTIZ.
MANUEL DE LEON.

Witness: JOSE MARIA SOTELO.

Witness: PEDRO RAMIRES.

Continuation of survey.

At the above-named place of San Ygnacio de la Canoa, on the eleventh of the said month and year, I, the said lieut'ant commanding, in order to continue the survey suspended on the preceding day, accompanied by the interested parties and appointed officials, being at the place
56 which had been designated as the centre, a southerly direction was taken along the public road, on which they went measuring and counting twenty-two *cordeles*, which brought them against the boundary line of the measurements established by the military post and company of Pinas at Tubac, where I ordered a cross to be painted, which was done upon a mesquite tree, as a sign for a monument. From here a westerly direction was taken, and they went on along said line measuring and counting fifty *cordeles*, which brought them to some low hills, where a pile of stones was placed as a monument; and having returned to the cross painted upon the mesquite tree they stretched the cord in an easterly direction, and started out measuring and counting again fifty *cordeles*, which brought them to a low, stony table-land facing the Santa Rita Mountains, by the canon known as the "Madera" (the lumber canon), upon the same line of boundary measurements established for the said post of Tubac. From all these measurements it follows that the land is bounded on the north for five leagues, more or less, by the Mission of San Xavier del Bac; on the west only by land inhabited by friendly people allied to us; on the east by land inhabited by the hostile Apaches, and on the south it is bounded by the boundary line of the military post of Tubac; and I, the said lieutenant commanding, entered these proceedings upon the record which exists in these archives under my charge, where are stated and described the said limits of the said Tubac, so that they should suffer no loss or damage, and thus it was established. Thus the said measurements were entirely concluded, giving as a result four sitios for the raising of cattle and horses, registered by Tomas and Ygnacio Ortiz, of this place, and they, considering themselves as having

received the surveyed land, and being satisfied with the said survey, were notified that they should conveniently

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(Seal.)

mark their boundary lines with monuments of lime and stone as the law demands. And according to law they signed with me, together with the appointed officials and witnesses who could write, in due form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

TOMAS ORTIZ.

YGNACIO ORTIZ.

MANUEL DE LEON.

Witness: PEDRO RAMIRES.

Witness: JOSE MARIA SOTELO.

Appraisement.

Then I, the same commanding officer, in order to have the land appraised and valued which had been surveyed in favor of Tomas and Ygnacio Ortiz, of this place, consisting of four sitios for the raising of cattle and horses, said that I appointed and I did appoint as such appraisers Lieutenant Manuel de Leon and the resident citizen Juan Jose Oroasco, who were the surveying and counting officials of said land, which they have seen well and examined particularly; and they being present, I communicated to them said appointment which they accepted, and each one made oath in due form well and truly to discharge his duty in this matter without any deception, fraud, or pretense, and according to the rules existing in such matters; and from their examination they said that each sitio should be valued at thirty dollars, taking into consideration that none of them had running water or natural standing water, but that water facilities might be obtained by means of a well; and when I had read to them this statement they affirmed it, ratified it, and signed it with me, those who could write, together with the witnesses, in due form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

MANUEL DE LEON.

Witness: JOSE ANTONIO SOTELO.

Witness: PEDRO RAMIRES.

58

Order for auction.

At the military post of Tubac, on the 12th day of July, 1821, I, the said lieutenant commanding, having returned to the said post, in view of the foregoing proceedings of survey and appraisement of the lands at the place of San Ygnacio de la Canoa, consisting of four sitios for the raising of cattle and horses, ordered, that said sitios should be put up at auction for thirty consecutive days according to the order issued by Brigadier Antonio Cordero, intendant of the provinces of Sonora and Sinaloa,

admitting at said auction the over and outbidding that might take place; and by these presents I so decreed, ordered, and signed with the lawful witnesses in the usual manner, which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

First auction.

At the military post of Tubac, on the 14th day of July, 1821, I, the said lieutenant commanding and subdelegate of the military post of the company of Pimas at Tubac, caused by the sound of the drum many people to assemble on the public square of the said post, and ordered Reyes Cruz, who acted as auctioneer, to call out in presence of all the bystanders in a loud and clear voice, "The lands of the place called Sgan Ygnacio de la Canoa, situated within the jurisdiction of the said post of Tubac, and consisting of four sitios for the raising of cattle and horses, surveyed in favor of Tomas and Ygnacio Ortiz, of this town, and appraised at one hundred and twenty dollars, being at the rate of thirty dollars for each sitio, are now for sale on account of the public treasury. Whoever wishes to bid, let him come forward and make his bid in due form before me, where every bid will be admitted." And no bidders having appeared, I therefore make this statement with the lawful witnesses in due form, which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

59 2d. At the same post of Tubac, on the 15th day of said month and year, another auction, equal in everything and with the same formalities as the former, was held; and no bidder having appeared, I made a statement thereof, which I signed with the lawful witnesses, which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

(Seal.)

3d. At the same post, on the 16th day of the same month and year, a like auction was held; and no bidder having appeared, I made a statement thereof, which I signed with the lawful witnesses, which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

4th. At the same post, on the 17th day of the said month and year, another auction was held; and no bidder having appeared, I made a state-

ment thereof in the usual form, which I signed with the lawful witnesses, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

5th. At the said post, on the 18th day of the same month and year, a like auction was held; and there appearing nobody to bid higher, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

6th. At the said post, on the 19th day of the said month and year, another auction was held; and no bidder having appeared, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

60

(Seal.)

7th. At the aforementioned post, on the 20th day of the said month and year, a like auction was held; and no bidder having appeared, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

8th. At the aforementioned post, on the 21st day of the said month and year, another auction was held; and no bidder having appeared, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

9th. At the said post, on the 22nd day of the said month and year, a like auction took place; and no bidder having appeared, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

10th. At the said post, on the 23d day of the said month and year, another auction was held; and no bidder appearing, I made a statement

thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

11th. At the said post, on the 24th day of the same month and year, a like auction was proceeded with; and no bidder having appeared, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

61 12th. At the said post, on the 25th day of the said month and year, a like auction was held; and no one appearing to put in a higher bid, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTO. SOTELO.

13th. At the aforementioned post, on the 26th day of said month and year, another auction was held; and no bidder appearing, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

14th. At the said post, on 27th day of the said month and year, another auction was held; and there appearing no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

15th. At the said post, on the 28th day of the said month and *and* year, a like auction was held; and there being no one to put in a higher bid, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

16th. At the same post, on the 29th day of the said month and year, another auction was held; and there appearing no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: JOSE ANTONIO SOTELO.

Witness: PEDRO RAMIRES.

62 17th. At the post, on the 30th day of the said month and year, another auction was proceeded with; and there having appeared no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTO. SOTELO.

18th. At the said post, on the 31st day of the said month and year, another auction was held; and there appearing no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTO. SOTELO.

19th. At the same post, on the 1st day of August of the said year, a like auction was held; and no bidder having appeared, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

(Seal.)

20th. At the same post, on the 2d day of the said month and year, another auction was held; and no bid being offered, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

21st. At the said post, on the 3d day of the same month and year, another auction was proceeded with; and there having appeared no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

63 22d. At the aforesaid post, on the 4th day of the same month and year, a like auction was held; and there being no one to put in a higher bid, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

23d. At the said post, on the 5th day of the said month and year, another auction was held; and no bidder appearing, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

(Seal.)

24th. At the said post, on the 6th day of the same month and year, a like auction was held; and bidder appearing, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

25th. At the same post, on the 7th day of the said month and year, another auction was held; and there appearing no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

26th. At the same post, on the 8th day of the said month and year, a like auction was held; and there appearing no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

64 27th. At the aforementioned post, on the 9th day of the said month and year, another auction was proceeded with; and there being no bidder present, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTO. SOTELO.

28th. At the same post, on the 10th day of said month and year, another auction was held; and there being no one to bid higher, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTO. SOTELO.

29th. At the said post, on the 11th day of the said month and year, another auction was held; and there appearing no bidder, I made a statement thereof, which I signed with my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

30th. At the said post of Tubac, on the 12th day of the month of August, 1821, I, the said commandant and subdelegate of the military post of Tubac, caused many people to be assembled by the sound of the drum on the public square of the said post, and in the presence of all the bystanders ordered the auctioneer to call out in a loud and clear voice: "The lands of the place called San Ygnacio de la Canoa, situate within the jurisdiction of the said post of Tubac, and consisting of four sitios for the raising of cattle and horses, registered in favor of Tomas and Ygnacio Ortiz, of this place, and appraised at one hundred and twenty dollars, being at the rate of thirty dollars each sitio, are now offered for sale on account of the public treasury. Whosoever desires to make a bid, let him come forward to make it in due form before me, where the bid he may make will be admitted;" at which time
65 appeared in person the Reverend Father Fray Juan Bano, agent of the mission of San Xavier del Bac, together with Xavier Ygnacio Sanches and Francisco Flores, residents of said village, the former overbidding the fixed price in the name of the other residents of the said village, and the same thing being done by the parties who registered the land; they alternately bid over the appraised value of one hundred and twenty dollars, until they arrived at the sum of two hundred and ten dollars, this latter bid being made by the said agent; and there being no one to overbid him, the auctioneer at last said: "For the first time, for the second time, for the third, going, going, gone to the reverend father minister of San Xavier del Bac and the citizens whom he represents, as he states."

In witness whereof the parties registering the land and the said minister signed the proceedings, together with one of those who accompanied him, the other being unable to write, with my legal witnesses, in the absence of a notary, to all of which I certify.

YGNACIO ELIAS GONSALES.

FRAY JUAN BANO,

Minister U. S. M. of the Mission del Bac.

XAVIER YGNACIO SANCES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

Order for proving capacity.

At the military post of Tubac, on the 13th day of the said month and year, I, the said subdelegate, inasmuch as these proceedings of survey, appraisement, and auction were concluded, and nothing was lacking except the notification of paying capacity to be given by the interested parties by the three witnesses, as is the usual custom, ordered them to be notified that they should attend to the matter, so that the investigation

might be proceeded with; of which I made a statement, with my lawful witnesses, in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

66

Notification.

Immediately, there being present the reverend father minister of the village of San Xavier del Bac, and the two citizens who accompanied him from said town, I gave them notice of the foregoing order, and in obid'ence thereto said minister presented the witnesses as required of him, and signed with me and my lawful witnesses in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

FATHER JUAN BANO,

Minister P. S. M. of San Xavier del Bac.

XAVIER YGNACIO SANCHES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

(Seal.)

Declaration of the first witness.

At the same military post of Tubac, on the 13th day of the month of August, 1821, I, the said lieutenant commanding and subdelegate of the said post, in obedience to the foregoing order, and the father minister, Fray Juan Bano, having presented as a witness Jose Antonio Oroasco, of this town, administered to him the oath, which he took in the name of God our Lord with the sign of the cross, by which he declared that he would tell the truth about whatever he might know and be interrogated concerning; and he being asked whether the father minister of San Xavier del Bac, Fray Juan Bano, held property of the citizens of said town wherewith to stock the place of San Ygnacio de la Canoa, registered in favor of Ygnacio and Tomas Ortiz and consisting of four sitios, he said that he had property and means to do so; and his declaration being read to him, he declared it to be correct and ratified it. He stated he was fifty years of age, and he not knowing how to sign, I did so for him, with my lawful witnesses, in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

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(Seal.)

Declaration of the second witness.

Immediately, on the same day, month, and year, appeared Juan Saenz, of this town, the second witness in these proceedings, and I administered to him the oath by God our Lord and the sign of the cross, whereby he

declared that he would tell the truth about what he might know that should be asked him; and being asked if the father minister of the village of San Xavier del Bac held in the name of the citizens of said village the means wherewith to stock the four sitios registered as appears in this proceedings, he said that he had the means to do so and property to stock said lands effectually; and his declaration being read to him, he affirmed and ratified it. He stated his age to be forty-seven years, and not knowing how to sign, I did so for him, with my lawful witnesses, in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

Declaration of the third witness.

At the said post, on the same day, month, and year, appeared Guillermo Saenz, a resident of the presidio of Tucson, presented as a witness in this matter, and I administered to him the oath by God our Lord and the sign of the holy cross, by which he declared that he would tell the truth about whatsoever he might know and be asked about; and he being asked the same questions as the preceding witnesses, he stated that the father minister of the village of San Xavier held property and means of the citizens of the said village wherewith to stock the land registered as mentioned in these proceedings; and his declaration being read to him, he affirmed and ratified it. He stated he was forty-nine years of age, and not knowing how to sign, I did so for him, with my lawful witnesses, in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

68

Conclusion of the proceedings.

At the said post of Tubac, on the same day, month, and year, I, the sub-delegate, these proceedings being now concluded, ordered that their record be forwarded by the monthly mail to the Brigadier Antonio Cordero, Knight of the Plaza of the military order of St. Esmeregildo and Governor Intendant of the provinces of Sonora and Sinaloa, with a summons to the interested parties that they should go themselves to the capital of Arizpe, to be present at the auction and final bidding for of the said lands, which must take place before the Provisional Board (junta provicional) of the capitol. I, the subdelegate, *dox* decreed, ordered and signed.

YGNACIO ELIAS GONSALES.

Notification.

Immediately, on the same day, month, and year, there being present the father minister of the village of San Xavier del Bac and the two citizens who accompanied him from said village, I communicated to them the foregoing order, and after acknowledging its contents, the said minister and one of the two citizens signed with me, the other not knowing

how to write; with my lawful witnesses, in the usual form, to which I hereby certify.

YGNACIO ELIAS GONSALES.
FRAY JUAN BANO,
Minister P. S. M. of San Xavier del Bac.
XAVIER YGNACIO SANCHES.

Witness: PEDRO RAMIRES.

Witness: JOSE ANTONIO SOTELO.

Memorandum.

By official letter of November 9, 1821, this record of proceedings was forwarded to the Governor Intendant of these provinces, and on the same day I gave notice thereof to the interested parties in order that they should without delay in person or by an attorney appear at the capitol of Arizpe to be present at the final auction.

YGNACIO ELIAS GONSALES.

ARIZPE, *December 6, 1821.*

To the Attorney-General of the Treasury (promotor fiscal) BUSTAMANTE.
To the PROVISIONAL (ACTING) INTENDANT:

The Attorney-General of this Intendencia says that Tomas
69 and Ygnacio Ortiz filed with your predecessor, Brigadier Antonio Cordero, a request in due form for the registry of the unappropriated land called San Ygnacio de la Canoa, situated within the jurisdiction of the military post of Tubac; and their claim having been admitted, the said intendant gave to the commanding officer and subdelegate judge of said company, Lieutenant Ygnacio Elias Gonsales, the necessary power by virtue of which he proceeded to the respective survey, from which resulted, without any detriment to adjacent neighbors, four

(Seal.)

sitios of land for the raising of cattle, which were appraised by intelligent experts in the sum of one hundred and twenty dollars, being at the rate of thirty dollars each sitio, on account of the necessity of putting a well upon them. With this appraisement the said surveyor offered them at auction during thirty consecutive days, on the last of which there appeared the reverend father Fray Juan Bano, minister of the mission of San Xavier del Bac, Ygnacio Sanches, and Francisco Flores, resident citizens of the same town. In the name of these latter the said minister bid on the said surveyed lands, and as the claimants bid also, they went on overbidding each other until the last bid reached the sum of two hundred and ten dollars, it being made by the said reverend father Fray Juan Bano in the name of the parties he represented. Therefore, there appearing no higher bidder, the commandant and subdelegate judge proceeded to receive competent information of the pecuniary capacity, and it being found that the last bidder holds the property and means of the persons he represents in sufficient quantity to keep the land of San

Ygnacio de la Canoa stocked, therefore the Attorney-General directs that these proceedings be brought before the superior court where such

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(Seal.)

matters pertain, and requests that you order with the summons of the interested parties the three public auctions to take place in due form in this capital; and at the conclusion of the last auction of the said lands that the highest bidder shall pay into the public treasury the original cost at which he obtains them, the half annual charge and customary eighteen per cent, the two per cent exacted by the general law, and three dollars for fees of the auditor's office, so that the record of the proceedings may be brought to a final settlement, giving a certificate for said payment and notifying the Superior Board of the Treasury (*junta superior de hacienda*) thereof for its approval or such decision as it may see fit to give. However, notwithstanding this my opinion, you will act in the matter as you see fit.

Arizpe, December 9, 1821.

FRANCISCO PEREZ.

ARIZPE, *December 13, 1821.*

As it appears to the attorney-general from his foregoing answer, the three public auctions and final sale of the lands referred to in these proceedings will be proceeded with upon summoning the interested parties. The provisional intendant of this province so decreed, ordered, and signed with lawful witnesses in the absence of a notary.

BUSTAMANTE.

Witness: JOSE MARIA MENDOZA.

Witness: JOAQUIN ELIAS GONSALES.

Immediately there appeared Ramon Muños, agent of the Reverend Father Fray Juan Bano, and he was notified of the answer from the treasury and the foregoing order, which notification he acknowledged, and, considering himself summoned, he signed with the intendant and lawful witnesses in the absence of a notary.

BUSTAMANTE.

RAMON MUÑOS.

Witness: JOSE MARIA MENDOZA.

Witness: JOAQUIN ELIAS GONSALES.

71

1st auction.

In the city of Arizpe, on the 13th day of December, 1821, there met as a board of auction the provisional intendant, as president, and the other members that compose it, to hold the first auction of the lands to which these proceedings refer, and they caused the people to be assembled at this office by the beating of the drum, and many persons gathered at the office of the intendant, when the auctioneer, Loreto Salcido, in their presence was ordered to ask for a bid, which he did in a loud and clear

voice, saying: "Here before this board of the treasury are being sold four sitios of public land for the raising of cattle situated at the place called San Ygnacio de la Canoa, within the jurisdiction of the military post of Tubac, surveyed in favor of Tomas and Ygnacio Ortiz, residents of that same town, and appraised in the sum of one hundred and twenty dollars, being at the rate of thirty dollars for each sitio, it being necessary to dig a well to make the land useful. Whosoever wishes to make a bid upon this land, let him come forward and do so in the manner established by law before this board, where his bid will be heard, notice being given that the Reverend Father Fray Juan Bano, minister of the mission of San Xavier del Bac, in the name of Ygnacio Sanches and Francisco Flores, resident citizens of the same town, had bid for said land the amount of two hundred and ten dollars; and with the understanding that on the third auction, which is to take place on the day after to-morrow, the sale shall be settled upon the highest bidder." As no bidder appeared, the board adjourned, and the minutes were signed by the president and members of this board.

ESCALANTE.
PEREZ.
BUSTAMANTE.
FUENTE.

2d auction.

At the same city, on the 14th day of the same month and year, the second auction took place of the public lands referred to in these
72 proceedings, with the same formalities as on the preceding day, and there appearing no bidder, the minutes were signed by the gentlemen composing this board.

ESCALANTE.
PEREZ.
BUSTAMANTE.
FUENTE.

3d auction.

At the city of Arizpe, on the 15th day of December, 1821, there being assembled as a board of auction the president and members composing the same, for the purpose of holding the third and last auction and finally to dispose of the lands to which these proceedings refer, the same statements were made by the auctioneer as on the first auction, with only this difference, that the public were notified that this would be the final sale. Then and there appeared Manuel Escalante, and in the name of and as lawful attorney for Tomas and Ygnacio Ortiz, residents of Tubac, he

(Seal.)

raised the bid, and as Ramon Muños did the same in the name of the reverend father Juan Bano, the two attorneys went on bidding against each other until the last bid reached the sum of two hundred and fifty dollars, made by the said Manuel Escalante in the name of the parties whom he represented; and the bell having now sounded twelve o'clock

of this day, and there appearing no higher bidder, the auctioneer said for the last time: "For the first, for the second, for the third time, going, going, gone to Tomas and Ygnacio Ortiz, to whom may it be of benefit." In this manner these proceedings terminated, the four sitios of unappropriated land composing the place called San Ygnacio de la Canoa, to which this record refers, being solemnly sold to those who originally registered them. In witness whereof this document was signed by their empowered attorney, Manuel Escalante, and the president and members of this board of auction.

73

(Seal.)

ESCALANTE.
PEREZ.
BUSTAMANTE.
FUENTE.
MANUEL ESCALANTE.

ARIZPE, *December 15, 1821.*

The record of these proceedings is to be transcribed, and, with the authorized and full testimony of the higher decisions, according to law, to be delivered to the attorney, Manuel Escalante, in order that within three days he may take such steps as he may deem proper in this matter, furnishing the name of a person in Mexico licensed and accredited to bring it before that court. The provisional intendant does decreed, ordered, and signed, with his lawful witnesses, in the absence of a notary.

BUSTAMANTE.

Witness: JOSE MARIA MENDOZA.

Witness: JOAQUIN ELIAS GONSALES.

Memorandum.

On the same day this record, transcribed upon eighteen legal sheets, was delivered according to the foregoing order.

To the PROVISIONAL INTENDANT:

I, Manuel Escalante, a resident of this city, in the name of and as attorney Tomas and Ygnacio Ortiz, appear before you and say that in order to attend promptly and faithfully to this matter and to the legal document which has been delivered to me, I desire to state that, inasmuch as everything has been done according to the rules and the superior courts in the matters referred to in said document, I am well satisfied with their present state of final sale, and I only request that you will by the shortest means possible have the matter brought before the Supreme Commission of Public Lands (Junta Superior de Hacienda) that I may obtain the corresponding title of grant and confirmation, which I hereby

74 seek to obtain, to the four sitios of land which compose the place called San Ygnacio de la Canoa, in favor of the parties whom

I represent, being from this moment ready to appoint in Mexico a licensed and accredited person to bring the matter before that court. Therefore I respectfully beg and entreat you to act upon this, my

request, as thereby you will benefit those whom I represent; in all of which I swear that I act in good faith.

MANUEL DE ESCALANTE.

Final judgment.

At the city of Arizpe, on the 15th day of December, 1821, the Provisional Intendant of these provinces of Sonora and Sinaloa, Ygnacio Bustamante, having examined all these proceedings of survey, appraisal, public sales, auctions, and final sale of the unappropriated lands of the place called San Ygnacio de la Canoa, situated within the jurisdiction of the military post of Tubac, and comprising four sitios for the raising of large cattle and horses, in favor of Tomas and Ygnacio Ortiz, residents of the same, the answer being given by their attorney as heretofore written, and having examined everything pertaining to the premises, said that declaring, as he hereby declares, all the steps taken in the matter to be correct, sufficient, and in accordance with the rules as laid down by the superior decrees, and admitting, as he from this moment admits, the said Tomas and Ygnacio Ortiz for adjustment with the national Treasury of the said vacant land, he has to order, and does order, that Don Manuel Escalante, attorney, be notified to pay into the national Treasury of this city the sum of two hundred and seventy-two dollars and six reales, as follows: two hundred and fifty dollars as principal, this being the amount of the bid at which they obtained the said land at the final auction; fourteen dollars and six reales for the corresponding half annual charge and its eighteen per cent; five dollars, being the respective two per cent exacted by the general law, and the

75 remaining three dollars for fees of the auditor's office of the same branch of the Government; and as soon as the said payment shall be made a certificate shall be given thereof and a record of the proceedings shall be forwarded to the Supreme Commission of the Public Lands (Junta Superior de Hacienda) for its approval, or whatever decision it may give. And by this order it was so decreed, ordered, and signed, with the lawful witnesses, in the absence of a notary.

YGNACIO DE BUSTAMANTE.

Witness: JOSE MARIA MENDOZA.

Witness: JOAQUIN ELIAS.

Immediately there was present the empowered attorney, Manuel Escalante, and he was personally notified of the foregoing order and took knowledge thereof and signed with the intendant and lawful witnesses, in the absence of a notary.

BUSTAMANTE.

MANUEL DE ESCALANTE.

Witness: JOSE MARIA MENDOZA.

Witness: JOAQUIN ELIAS.

Provincial Board of the Treasury at Arizpe, December 17, 1821.

(Seal.)

Hereby are declared as legally, publicly, and solemnly sold the four sitios of vacant land which comprise the place San Ygnacio de la Canoa,

situate within the jurisdiction of the military post of Tubac, at the meeting of the board of auctions of this city on the 15th of the current month, in favor of Tomas and Ygnacio Ortiz, of the same Tubac, for the amount of two hundred and fifty dollars; and therefore the Supreme Commission of Public Lands (Junta Superior de Hacienda) shall by this document be informed of said fact for its approval or such resolutions as it may determine. Thus it was resolved and signed by the president and members of this provincial board.

ESCALANTE.
PEREZ.
BUSTAMANTE.
FUENTE.

76 To the Lieutenant Intendant of the Treasury, provisional accountant, Attorney-General. Arizpe, December 17, 1821. The above resolution of the provincial Board of this Intendencia shall be complied with.

BUSTAMANTE.

The provincial receivers of the National Treasury of Arizpe and its Province: We certify that on page 39 of the account book of the current year we made the following entry:

(Seal.)

December 17.

Half annual charge of lands.

Charged two hundred and seventy-two dollars and six reales paid into this Treasury by Manuel de Escalante, in the name of and as the attorney for Tomas and Ygnacio Ortiz, residents of the military post of Tubac, as follows: Two hundred and fifty dollars as being the principal amount for which this Intendencia sold to them four sitios of vacant land for the raising of cattle, which comprise the tract known as San Ygnacio de la Canoa, situate within the jurisdiction of the said post of Tubac; fourteen dollars and six reales for the half annual charge, and eighteen per cent for their conveyance to Spain; five dollars for the two per cent exacted by the general fund; and the three remaining dollars for the auditor's office of the same branch, as is shown by order No. 34, \$272.6.0.

MANUEL DE ESCALANTE.
FUENTE.
ESCALANTE.

And we issue these presents for the knowledge of whomsoever it may concern.

Arizpe, December 17, 1821. Tomas de Escalante. Miguel Maria de la Fuente.

Ures, January 30, 1849. There having presented themselves at this General Treasury, Tomas and Ygnacio Ortiz, brothers, soliciting that a title of land granted be issued to them upon the present record, and having made the corresponding payment of the value of four sitios which comprise the place San Ygnacio de la Canoa according to the certificate which is affixed to page 22 of this record, this

treasury will issue to them the said title which they solicit for their protection. Thus I, the substitute treasurer, decreed, ordered, and signed with my lawful witnesses.

ANTONIO TERAN Y PERALTA.

Witness: JOAQUIN URIAS.

Witness: MIGUEL APALATEGUI.

In this manner the foregoing expediente was brought to a conclusion in every way in accordance with the existing laws and rules regulating such matters, and the record thereof deposited in the archives of the office of this general treasury for perpetual immutability.

Wherefore, making use of the power vested in me by the laws, I hereby, in the name of the sovereignty of the State, grant and confirm title in lawful form of the four sitios of land for raising large cattle and horses comprised in the place called San Ygnacio de la Canoa within the jurisdiction of the district of this capital upon Tomas and Ygnacio Ortiz, to whom I grant, give, and adjudge the said four sitios by way of sale, with all the qualities, stability, and permanence which the laws grant, to hold for themselves, their children, heirs, and successors, with all the ingresses and egresses, uses, privileges, rights, mountains, hills, canons, rivers, valleys,

(Seal.)

78 trees, shrubs, appurtenances, pastures, waters, deposits of water, watering places, reservoirs, ponds, dams, and everything else pertaining thereto; under the precise condition and definite restriction that they must keep said lands of San Ygnacio de la Canoa stocked and in their possession, not allowing them at any time to become abandoned, deserted, or unoccupied; warning being hereby given that if they should be allowed to become totally abandoned or deserted for the space of three consecutive years, and if any person should register them, proving in that event said facts, they will be declared public lands, and will be adjudged anew to the highest bidder; except, however, as is just, in cases where the abandonment may be caused by well-known hostile invasions and only for such periods as such invasions may last; hereby notifying the said Tomas and Ygnacio Ortiz, their children, heirs, and successors, that they must, in the strictest manner, keep within the limits of the land, its appurtenances, landmarks, and boundary lines, as precisely established in the foregoing statement of survey made in 1821 by the deceased Ygnacio Elias Gonsales; observing and obeying in every respect article sixty-three of the organic law of the treasury number twenty-six, dated July 11, 1834, which puts them under the obligation of maintaining on their boundary lines monuments of lime and stone, under a penalty in case of noncompliance of a fine of twenty-five dollars, which they will have to pay into the common fund; in which case said monuments are to be constructed at the expense of the interested parties. And by virtue of the said power vested in me by the laws in such cases provided, I order and instruct the judges, tribunals, and local authorities now in existence and which may hereafter exist that for the furtherance of the good and prompt administration of justice, and in obedience to

the laws, ordinances, decrees, and regulations referring to the matter, they shall not permit the said Tomas and Ygnacio Ortiz, their children, heirs, and successors, to be in any manner disturbed, harassed, or molested in the free use, exercise, possession, authority, and dominion of the said four sitios of land for the raising of cattle and horses, which are comprised in the said place of San Ygnacio de la Canoa, but they shall take care and carefully watch with the greatest vigilance that the said interested parties be always protected and maintained in the quiet and peaceful possession which is their legitimate right, in order that they may freely sell, exchange, barter, donate, make over, cede, and dispose of said four sitios of land according to their free will and pleasure as proprietary and absolute owners in fee; under which terms I have issued this title of grant in due form of law in favor of the said Tomas and Ygnacio Ortiz, their children, heirs, and successors, delivering to them the said title for their protection, first placing it on record in the corresponding book. Given at Ures, capital of the State of Sonora, on the second day of February, eighteen hundred and forty-nine; authorized and signed by me, the substitute treasurer-general of the same State; sealed with the legal seal in use at this office, and subscribed by my lawful witnesses in the absence of a legal notary.

(Seal.)

Memorandum of corrections: Folio 1, vuelta, otro; folio 7, anunciado; folio 11, doy fe, entre reglones; folio 2, buelta, dia, entre parentesis; folio 4, buelta, quedaron. Vale.

[SEAL.]

ANTONIO T. Y PERALTA.

Witness: JOAQUIN ELIAS.

Witness: MIGUEL APALATEGUI.

This title is recorded on page 75 and the other side of the respective book.

[SEAL.]

TERAN.

Antonio Teran y Peralta, treasurer and constituto of the Free State of Sonora.

I certify that on page 6 of the official account book of charges and items for the present year there exists the following entry:

February 2. Charges on titles of land, thirty dollars, paid into this treasury by Tomas and Ygnacio Ortiz for the cost of the title issued to-day by this treasury of four sitios of land, for the raising of cattle and horses, situated at the place called San Ygnacio de la Canoa, in the jurisdiction of the town of Tubac, in the district of this capital, which were surveyed in their favor in the year 1821 and adjudged to them to-day by this office, as is proven by the respective expediente which exists in the archives of the corresponding branch; and of the said payment this certificate is hereby given to the said interested parties for their protection. \$30.

TERAN.

For myself and in the name of my brother.

TOMAS ORTIZ.

Given in Ures on the second of February, eighteen hundred and forty-nine.

ANTO. T. PERALAT.

(Endorsed:) Case No. 6. File No. 6. In the Court of Private Land Claims. Maish & Driscoll vs. United States. Translation of San Ygnacio de la Canoa grant. Filed in the office of the clerk, Court of Private Land Claims, Jan. 15, 1894. Jas. H. Reeder, clerk; by R. L. Long, deputy.

(Here follows map, marked p. 81.)

82 *Stipulation as to extracts from expedientes at Hermosillo.*

United States Court of Private Land Claims.

| | | |
|--------------------|---|---------------------------------------|
| MAISH AND DRISCOLL | } | No. 6. San Ygnacio de la Canoa grant. |
| vs. | | |
| THE UNITED STATES. | | |

It is hereby stipulated that the catalogue of expedientes of lands of the States of Sonora and Sinaloa, which expedientes exist in the archives of the treasurer-general of the State of Sonora, which catalogue was printed by the State of Sonora at Hermosillo in 1889, contains accurate statements so far as they go as to the facts stated in such statements of the contents of such expedientes; and it is further stipulated and agreed that the following statements concerning the following-named expedientes, which statements are taken from said catalogue, are offered in this case by plaintiffs and shall be included in the transcript of this case if such case should be appealed as part of the evidence of plaintiffs.

MATT. G. REYNOLDS,
United States Attorney.

ROCHESTER FORD,
Of Counsel for Plaintiffs.

TUCSON, ARIZONA, *April 5, 1895.*

83 Summary or classification of the expedientes existing at Hermosillo, Sonora, Mexico, prepared by Rochester Ford from the official catalogue issued by the State of Sonora of such expedientes. Those marked with a star (*) are embraced within the notes or report of Ignacio Bonillas, esq., which was offered in evidence. The pages given are those of the official catalogue.

Grants instituted prior to the independence, carried on, confirmed and final title thereon issued by intendentes.

*Cuchuta. Page 37. Title issued in 1823.

*Neustra Señora de los Dolores. Page 70. Registered in 1778; title issued in 1824.

Potrero. Page 75. Denounced in 1817; confirmed September 5, 1822.

*San Elisario (á) El Bamuco. Page 118. Title issued November 12, 1824.

Grants instituted prior to the independence, carried on under intendentes, confirmed and final title thereon issued by commissaries general in the name of the Mexican nation.

*Alamo de Sevilla. Page 8. Registered in 1821; title issued in 1825.

*Cieneguita. Page 27. Adjudicated in 1825.

*Cuchilla del Burro. Page 28. Registered in 1817; adjudicated in 1824.

*Chupisonora, Taray, Punta del agua y Veranito. Page 33. Title issued in 1825.

*Encinal. Page 43. Denounced in 1817; title issued November 12, 1824.

*Nuestra Sra. de los Dolores de Cobayma. Page 70. Title issued in 1825.

Ntra. Sra. del Carmen. Page 70. Registered in 1820; title issued in 1824.

*Pilares. Page 87. Registered in 1821; title issued in 1824.

*San Juan del Carrizo. Page 107. Denounced in 1818; title issued January 28, 1825.

*San José de la Noria. Page 119. Registered in 1812; title issued in 1824.

*San Jorge de Baborocagui. Page 124. Registered in 1821; title issued in 1825.

84 *San José de Caguinagua. Page 124. Registered in 1795; title issued in 1825.

*San José de Tutugueche. Page 125. Registered in 1813; title issued in 1824.

*San Rafael de la Zanja. Page 141. Registered in 1821; title issued in 1825.

*San Juan Bautista de Cochorime. Page 133. Adjudicated in 1824. S. José de Sonoyta. Page 142. Title issued in 1825.

*Tres Marias. Page 147. Registered in 1820; title adjudicated in 1824.

Grants instituted prior to the independence, confirmed and final title thereon issued by State authorities.

Animas. Page 4. Registered in 1814; title delivered in 1832.

Agua de las Mesteñas. Page 10. Registered in 1788; title delivered in 1835.

Chanate y Bamori. Page 26. Registered in 1822; title issued in 1833.

Carrizal y San Diego. Page 34. Registered in 1800; title issued in 1834.

Cuchuberachi. Page 38. Denounced in 1822; title issued in 1834.

Icuribampo. Page 51. Registered in 1810; adjudicated in 1826.

Lo de Rodriquez. Page 55. Registered in 1801; title issued in 1834.

Nuestra Señora de la Asunción del Taray. Page 68. Registered in 1805; title issued in 1833.

Ntra. Sra. del Refugio (á) Los Yaquis. Page 70. Registered it 1820; adjudicated in 1834.

Palos Blancos. Page 77. Registered in 1805; title issued in 1833.

Potrerrillo. Page 78. Registered in 1813; title issued in 1850.

Palmar. Page 82. Registered in 1781; title issued 1848.

Pilares (á) Rancho viejo. Page 82. Registered in 1805; title issued in 1850.

Piedras verdes. Page 86. Registered in 1818; title issued in 1834.

San José del Tabelo. Page 96. Registered 1766; title issued in 1833.

Saguaribo. Page 103. Registered in 1818; adjudicated in 1826.

San Antonio de la Cañada. Page 104. Registered in 1813; adjudicated in 1832.

Santa Rosa. Page 105. Registered in 1814; adjudicated in 1832.

85 Subiate. Page 113. Denounced in 1816; title issued May 27, 1833.

San Antonio (á) Aguage. Page 118. Registered in 1821 (month not given); adjudicated in 1833.

* San Ignacio de la Canoa. Page 121. Registered in 1820; adjudicated in 1849.

San José del Palmarito. Page 122. Registered in 1805; title issued in 1835.

San Antonio de las Animas. Page 124. Registered in 1813; title issued in 1833.

S. José de Teopari. Page 325. Registered in 1813; title issued in 1834.

S. Juan de los Lagos (á) El Desmonte. Page 125. Registered in 1812; title issued in 1834.

S. Felipe y Arroyo del Espíritu Santo. Page 135. Registered in 1812; title issued in 1835.

San José de Toicerovavi. Page 145. Registered in 1817; title issued in 1833.

Grants instituted prior to independence, confirmed and final title issued thereon by the Mexican Republic in the time of the departments.

Agiabampo y Carazeri. Page 5. Begun in 1805; title delivered in 1841.

Alamo, Sierra de Jarolache y San Juan. Page 8. Registered in 1802; title delivered in 1837.

Bacatete. Page 15. Begun in 1812; adjudicated in 1843.

Carrizal de Tena. Page 25. Denounced in 1819; title issued in 1837.

Chuculisani y Lagunas Prietas. Page 29. Registered in 1805; title issued in 1836.

Cervantes. Page 30. Registered in 1813; title issued in 1838.

Cerrito de la Flojera. Page 34. Registered in 1819; title issued in 1837.

Guateco y Bojute. Page 46. Registered in 1803; title issued in 1836.

Lajitas y Palos Blancos. Page 57. Denounced in 1817; title issued in 1838.

Llano Grande. Page 58. Registered in 1821 (month not given); adjudicated in 1843.

Llano de la Cabeza. Page 59. Denounced in 1819; title issued in 1838.

Macopaco. Page 61. Registered in 1818; title issued in 1842.

Pozito y punta de Agua. Page 76. Registered in 1821 (month not given); adjudicated in 1837.

Plomosas. Page 77. Surveyed in 1798; title issued in 1836.

86 Rodeito y Real viejo. Page 90. Denounced in 1816; title issued May 2, 1837.

San José de Gracia. Page 107. Denounced in 1814; title issued October 27, 1837.

San José de la Nopalera. Page 107. Denounced in 1816; title issued in 1839.

San Juan. Page 108. Denounced in 1817; title issued November 28, 1836.

Sn. Blas y Sn. José de Tosimurito. Page 108. Registered in 1815; issued in 1837.

San José (á) El Potrero. Page 109. Registered in 1817; title issued in 1837.

San Nicolas. Page 109. Registered in 1814; title issued in 1837.

San Pedro. Page 123. Registered in 1807; title issued in 1839.

San Rafael de la Noria. Page 126. Registered in 1813; title issued in 1837.

Titles issued in 1822.

San Clemente de Terape. Page 118.

Titles issued in 1823.

Calabazas. Page 27.

Titles issued in 1824 (in addition to those appearing elsewhere in this summary).

Ocuca. Page 73.

* Parra. Page 86. Denounced in 1814; title issued July 6, 1824.

Sanjones. Page 117. Registered in 1816; adjudicated in 1824.

* San Antonio de la Ciénega y la Mora. Page 118.

San José del Cajón. Page 119. Adjudicated in 1824.

* San Rafael. Page 120. Registered in 1822; adjudicated in 1824.

San Ignacio (á) Las Cuervas. Page 121.

San José del Ranchito. Page 125. Registered in 1807; title issued in 1824.

87 Grants where petitions were addressed to the commissary-general in the first instance, and titles were issued by him.

* Cobachi. Page 41. Registered and adjudicated in 1825.

* San Antonio de Pádua (á) El Poso de Crisanto. Page 105. Denounced in 1825; title issued August 27, 1825.

Grants instituted after the independence, and before 1825, before intendentes, subdelegates and others, carried on, confirmed and final title thereon issued by the commissary-general in the name of the Mexican Republic.

- * Batana. Page 15. Registered in 1822; title issued in 1825.
- * Braviso. Page 15. Registered in 1821; title issued in 1824.
- * Corideguachi. Page 27. Registered in 1822; title issued in 1825.
- * Higuera. Page 48. Registered in 1821; adjudicated in 1825.
- * Merced de las Flores. Page 61. Title issued in 1824.
- * Potrero. Page 76. Registered in 1822; adjudicated in 1825.
- * Padercitas. Page 76. Registered in 1822; adjudicated in 1824.
- Palmillas. Page 76. Adjudicated in 1825.
- * San José del Cabrizo. Page 105. Registered in 1823; adjudicated in 1825.
- * San Antonio del Alamito. Page 118. Registered in 1823; adjudicated in 1824.
- San Felipe de Toyvapa. Page 119. Registered in 1823; adjudicated in 1825.
- * San Francisco Javier (á) La Palma. Page 119. Adjudicated in 1824.
- * S. José del Potrero. Page 119. Registered in 1822; adjudicated in 1825.
- * San Juan Nepomuceno (á) El Corral de Arvizu. Page 120. Title issued in 1824.
- San Juan Nepomuceno (a) La Paloma y Aguila. Page 120. Registered in 1823; title adjudicated in 1825.
- San Rafael de Juriquipa. Page 120. Registered in 1812; adjudicated in 1825.
- * Santa Ana. Page 120. Registered in 1822; adjudicated in 1825.
- Sn. José de Nator y S. Ignacio de Loyola. Page 131. Registered in 1822; title issued in 1825.
- 88 *Tebisco. Page 147. Registered in 1822; adjudicated in 1824.
- * Viejo (a) De lo de Salvador. Page 155. Registered in 1822; adjudicated in 1825.

Grants instituted after the independence, and before 1825, before intendentes, subdelegates and others, carried on, confirmed and final title thereon issued by the treasurer-general of the State of Sonora.

- Animas (á) Los Chinos. Page 4. Registered in 1822; adjudicated in 1831.
- Corral viejo. Page 27. Registered in 1822; adjudicated in 1833.
- Ciénega. Page 27. Registered 1822; title issued in 1834.
- * San Miguel de la Huerta. Page 96. Registered in 1824; title issued 1833.
- San Benito (á) La Palmita. Page 118. Registered in 1824; adjudicated in 1833.
- San José del Chicural. Page 119. Registered in 1822; adjudicated in 1832.
- Vallecitos. Page 155. Registered in 1822; title issued in 1833.

Grants instituted after the independence, and before 1825, before intendentes, subdelegates and others, carried on, confirmed and final title thereon issued by the Mexican Republic in the time of the Departments.

Casa Colorada. Page 27. Registered in 1822; adjudicated in 1837.
Pozo de Crisanto. Page 83. Registered in 1824; title issued in 1837.
Santa Rosa (a) La Poza. Page 120. Registered in 1824; adjudicated in 1837.

Grants instituted before State officials, carried on, confirmed and final title thereon issued by the Mexican Republic in the time of the Departments.

Agua prieta, Naynadivacachi y Santa Bárbara. Page 8. Registered in 1835; title issued in 1836.

Alisos. Page 9. Registered in 1828; title issued in 1836.

Arrieros. Page 11. Registered in 1835; title issued in 1837.

89 Bavisio. Page 17. Registered in 1833; title issued in 1836.

Cañada del Valle del Sonora. Page 23. Registered in 1823; title issued in 1837.

Cerro Colorado y Nacapulito. Page 34. Registered in 1834; title issued in 1836.

Cajón y Tubaco. Page 39. Registered in 1835; title issued in 1837.

Jesus Maria. Page 53. Registered in 1834; title issued in 1837.

Jusibambo. Page 54. Registered in 1834; title issued in 1838.

Llano Blanco. Page 58. Registered in 1830; title issued in 1837.

Mesa del Alamito. Page 66. Registered in 1835; title issued in 1836.

Obispo. Page 72. Registered in 1830; adjudicated in 1837.

Parida. Page 81. Registered in 1825 (month not given); title issued in 1837.

Paredones y San Juan Bautista. Page 83. Registered in 1835; title issued in 1837.

Palma. Page 83. Registered in 1835; title issued in 1837.

Potrero. Page 84. Registered in 1835; title issued in 1837.

Pozito. Page 84. Registered in 1835; title issued in 1836.

San Antonio. Page 95. Registered in 1833; title issued in 1841.

Seri. Page 103. Registered in 1826; adjudicated in 1838.

Sierra de S. José. Page 114. Registered in 1834 (month not given); title issued in 1836.

San José (a) La Angostura. Page 114. Registered in 1834; title issued in 1836.

S. Juan D. Madrid. Page 115. Registered in 1830; title issued 1838.

S. José de la Mesa. Page 116. Registered in 1832; adjudicated in 1837.

Sendraditas. Page 127. Registered in 1835; title issued in 1838.

San José de los Angeles. Page 131. Registered in 1828; title issued in 1836.

Sn. Fernando de la Casita. Page 135. Registered in 1834; title issued in 1837.

San Juan Bautista de la Tierra Prieta. Page 135. Registered in 1835; title issued in 1837.

San Pedro del Almagre. Page 135. Registered in 1835; title issued in 1837.

Sovechi. Page 136. Registered in 1835; title issued in 1837.

90 Saucito. Page 139. Registered in 1834; title issued in 1837.

S. José de Taribuci. Page 139. Registered in 1834; title issued in 1837.

S. Luis (á) El Saucito (en el Picacho). Page 139. Registered in 1834; title issued in 1837.

Tienda Pintada. Page 147. Registered in 1830; adjudicated in 1837.

Grants instituted under the departments, carried on, confirmed, and final title thereon issued by the State officials.

Batea. Page 15. Registered in 1836; title issued in 1849.

Bomi. Page 16. Denounced in 1842; title issued in 1847.

Chiltepines. Page 26. Registered in 1844; adjudicated in 1847.

Cascarita. Page 31. Registered in 1838; title issued in 1852.

Madera y Ventana. Page 65. Registered in 1843; title issued in 1850.

Pillado el Grande. Page 76. Registered in 1839; adjudicated in 1849.

Sáric. Page 117. Registered in 1839; adjudicated in 1848.

S. Antonio de Iturbide. Page 128. Denounced in 1841; title issued in 1848.

San Francisco. Page 129. Denounced in 1847; title issued in 1849.

Todos Santos (á) Los Muertos. Page 151. Registered in 1836; title issued in 1852.

Grants issued by the State of Sonora.

These are far too numerous to set out in detail. The official catalogue shows more than 180 of such titles, issued in the various years as follows: In 1826, one; 1828, three; 1830, ten; 1831, fifteen; 1832, sixteen; 1833, forty-three; 1834, twenty-six; 1835, twenty-one; 1848, nine; 1849, five; 1850, eleven; 1851, four; 1852, sixteen.

(Endorsed:) No. 6. Court of Private Land Claims. Maish & Driscoll vs. United States. San Ygnacio de la Canoa grant. Stipulation. Filed in the office of the clerk Court of Private Land Claims May 28, 1895. Jas. H. Reeder, clerk. By R. L. Long, deputy.

Alamo de Sevilla: Four sitios of land. Page 8 of official catalogue. Begun by petition before Bustamante November 2, 1821. Receipt for payment signed March 2, 1822, by Escalante and Fuente. On back of expediente is note signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on July 18, 1825.

Batana: Four sitios of land. Page 15 of official catalogue. Begun by petition before Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings August 16, 1822. Receipt for payment signed by Fuente and Gonzales October 20, 1822. Note on expediente that title had been issued on May 15, 1825.

Baviso: Two sitios of land. Page 15 of official catalogue. Begun by petition before Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings December 28, 1821. Receipt for payment signed by Escalante and Fuente March 18, 1822. Note on expediente signed by Riesgo as commissary-general, and all in his handwriting, that he had issued the corresponding title of sale and confirmation on November 18, 1824.

Chanate y Bamori: Four sitios of land. Page 26 of official catalogue. Begun by petition before Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings April 14, 1822. Receipt for payment signed by Fuente and Jose Maria Mendoza December 22, 1822. Note on expediente, signed by Mendoza, that the corresponding title for the lands spoken of in the expediente had been issued on April 4, 1833. This grant is recorded in the book of Toma de 92 Razon for the year 1833 at the bottom of the back of page 9 and the top of page 10, the note of the record being signed by Mendoza, treasurer-general of the State of Senora.

Corideguachi: Two sitios of land. Page 27 of official catalogue. Begun by petition before Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings January 21, 1822. Receipt for payment signed by Escalante and Fuente March 18, 1822. Note on expediente that title had been issued January 10, 1825.

Higuera: One and one-half sitios of land. Page 48 of official catalogue. Begun by petition before Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings December 13, 1821. Receipt for payment signed by Escalante and Fuente March 29, 1822. Note on expediente that title had been issued May 15, 1825.

Ntra Sra. del Carmen: Three sitios of land. Page 70 of official catalogue. Begun by petition before Governor Intendente Cordero. Petition admitted and order made by him for survey and other proceeding June 19, 1821. Receipt for payment signed by Escalante and Fuente November 9, 1821. Note on expediente signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on November 15, 1824.

Padercitas: One and three-quarters sitios of land. Page 76 of official catalogue. Begun by petition before the intendente of the public treasury, Bustamante. Petition admitted and order made by him for survey and other proceedings January 29, 1822. Receipt for payment signed by Escalante and Fuente March 25, 1822. Note on expediente 93 signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on November 14, 1824.

Palmillas: One sitio and one caballeria of land. Page 76 of official catalogue. In this grant, after usual proceedings had been gone through, Bustamante, intendente-general, by order dated Arizpe, July 25, 1823, directs that the resolution of the junta provincial be complied with. Receipt for payment signed by Fuente and Jose Maria Mendoza July 24, 1823. Note on expediente that title had been issued May 15, 1825.

Pilares: Three sitios of land. Page 87 of official catalogue. Begun by petition before Governor Intendente Cordero. Petition admitted and

order made by him for survey and other proceedings June 13, 1821. Receipt for payment signed by Bustamante and Jose Maria de Casas August 27, 1821. Note on expediente signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on November 15, 1824.

San Francisco Javier (á) la Palma: Four sitios of land. Page 119 of official catalogue. Petition addressed to Sor. Sub. Delegado y Juez de partido, Ygnacio Escobosa. Petition admitted by him and order made for survey and other proceedings February 12, 1822. Proceedings referred to promotor fiscal by Intendente Bustamante July 13, 1822. Opinion of promotor fiscal to him August 3, 1822. Order for the three almonedas signed by Bustamante and assistants, and three almonedas signed in same way. Approval of proceedings and order for payment by Bustamante, as intendente interino of Sonora and Sinaloa and ministro tesorero propietario. Receipt of payment signed by Fuente and Gonzales August 12, 1822. Note on expediente signed by Riesgo
94 that he had issued the corresponding title of sale and confirmation on the 15th day of November, 1824.

San José del Potrero: Three sitios of land. Page 119 of official catalogue. Begun by petition before Governor Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings January 9, 1822. Receipt for payment signed by Escalante and Fuente March 25, 1822. Note on expediente signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on May 18, 1825.

San Juan Nepomuceno (á) el Corral de Arvizu: Two sitios of land. Page 120 of official catalogue. Petition addressed to Sor. Sub. Delegado y Juez Agrimensor. After usual proceedings expediente was referred to promotor fiscal by Intendente Bustamante March 13, 1822, and after opinion of promotor fiscal and three almonedas, each signed by Bustamante and assistants, and approval of proceedings and order for payment signed by Bustamante as intendente interino and ministro tesorero propietario, payment was made and receipt for same signed by Escalante and Fuente March 18, 1822. Note on expediente signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on November 15, 1824.

San Rafael: Two sitios of land. Page 120 of official catalogue. Begun by petition before Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings June 9, 1822. Receipt for payment signed by Fuente and Gonzales August 27, 1822. Note on expediente signed with rubric of Mendoza that title had been issued November 17, 1824.

95 Santa Ana: Three sitios of land. Page 120 of official catalogue. Begun by petition before Governor Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings January 9, 1822. Receipt for payment signed by Escalante and Fuente March 25, 1822. Note on expediente signed by Riesgo as Commissary-General of the Treasury that he had issued the corresponding title of sale and confirmation on May 15, 1825.

San Ygnacio de la Canoa: Four sitios of land. Page 121 of official catalogue. Begun by petition before the Governor Intendente Septem-

ber 6, 1820. Petition admitted and order made by Cordero for survey and other proceedings May 29, 1821. Receipt for payment signed by Escalante and Fuente December 17, 1821. Note on expediente signed by Teran that title had been issued. This grant is recorded in book of Toma de Razon on back of page 79, under date of February 2, 1849, entry of record being signed by Teran, Treasurer-General of the State of Sonora.

San Rafael de la Zanja: Four sitios of land. Page 141 of official catalogue. Begun by petition before Intendente Cordero. Petition admitted and order made by him for survey and other proceedings July 19, 1821. Receipt for payment signed by Escalante and Fuente January 11, 1822. Note on expediente that title had been issued May 19, 1825.

Tres Marias: Four sitios of land. Page 147 of official catalogue. Begun by petition before Subdelegate and Judge of Surveys Escobosa. Petition admitted and order for survey and other proceedings made by him December 5, 1821. Proceedings referred to Promotor Fiscal by Intendente Bustamante March 13, 1822. Opinion of Promotor
96 Fiscal and three almonedas and approval of proceedings by Intendente Bustamante and order for payment. Certificate of receipt of payment signed by Escalante and Fuente March 18, 1822. Note on expediente signed by Riesgo as Commissary-General that he had issued the corresponding title of sale and confirmation on November 14, 1824.

Tebisco: Medio sitio of land. Page 147 of official catalogue. Begun by petition before Intendente Bustamante. Petition admitted and order made by him for survey and other proceedings September 2, 1822. Usual proceedings of pregonos and almonedas. Certificate of receipt of payment signed by Fuente only, on account of the absence of his associate. Note on expediente signed with rubric of Mendoza that title had been issued November 18, 1824.

Viejo (á) de lo de Salvador: Five sitios of land. Page 155 of official catalogue. Begun by petition before Subdelegate Escobosa. Petition admitted and order for survey and other proceedings made by him March 6, 1822. Usual proceedings of survey and valuation, and proceedings referred to Promotor Fiscal by Intendente Bustamante July 18, 1822. Opinion of Promotor Fiscal and three almonedas, and approval of proceedings by Bustamante and order for payment. Certificate of receipt of payment signed by Fuente and Gonzales August 12, 1822. Note on expediente signed with rubric of Mendoza that title had been issued May 15, 1825.

97 Cieneguita: One sitio of land. Page 27 of official catalogue. Begun by petition before Governor Intendente Roxo. Petition admitted and order for survey and other proceedings made by him January 7, 1819. Note on expediente signed by Riesgo as commissary-general, and all in his handwriting, that he had issued the corresponding title of sale and confirmation on August 11, 1825.

Cuchilla del Burro: One sitio and two and three-quarters caballerias of land. Page 28 of official catalogue. Begun by petition before Intendente Carpina. Petition admitted and order for survey and other proceedings made by him February 6, 1827. Receipt for payment signed

by Roxo, Escalante, and Vildosola. Note on expediente signed by Riesgo as commissary-general, and all in his handwriting, that he had issued the corresponding title of sale and confirmation on November 14, 1824.

Chupisonora, Taray, Punta del Agua y Veranito: Three sitios and a fifth of land. Page 33 of official catalogue. Begun by petition before the intendente February 20, 1809. Receipt for payment signed by Bustamante and Santianes October 16, 1825. In this grant Jose Maria Mendoza, as promotor fiscal, gives his opinion to Commissary-General Riesgo that after certain payments are made title should issue, in which opinion Riesgo concurs under date of October 1, 1825. Note on expediente that the corresponding title of sale and confirmation had been issued on December 22, 1825.

Encinal: One sitio of land. Page 43 of official catalogue. Begun by petition before Subdelegate Carpena. Petition admitted and order for survey and other proceedings made by him February 5, 1817.

98 Receipt for payment signed by Fuente and Gonzales July 30, 1822. Note on expediente signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on November 12, 1824.

Nuestra Sra. de los Dolores de Cobayma: One and three-quarters sitios four caballerias and one hundred and six cuerdas of land. Page 70 of official catalogue. Petition addressed to Senor Sub Delegado Juan Daza. Petition admitted by him February 24, 1804. Interested parties to whom expediente had been delivered petition the Commissary-General, Riesgo, to issue title. This petition referred by Riesgo to promotor fiscal November 18, 1824. Report of promotor fiscal to commissary-general. Order signed by Riesgo to proceed to the three public almonedas. Notification to attorney of interested parties signed by Riesgo, Mendoza, and the attorney, and Cabanillas, assistant. Three almonedas each, signed by Juan Miguel Riesgo. Order that expediente be shown to interested party, dated Fuerte, December 9, 1824, signed by Riesgo and Mendoza. Declaration of regularity of proceedings and order to interested party to pay value of land, signed by Juan Miguel Riesgo and assistants. Acceptance by representative of interested party, signed by him and by Riesgo and assistants. Note on expediente signed with rubric of Mendoza that title had been issued on November 14, 1825.

Potrero: One sitio of land. Page 76 of official catalogue. Begun by petition before Subdelegate Carpina. Petition admitted by him May 21, 1817. Receipt for payment signed by Fuente and Gonzales September 5, 1822. Note on expediente signed by Riesgo as commissary-general that he had issued the corresponding title of sale and confirmation on July 6, 1824.

Parra: One sitio and three-quarters of another and thirty-five cordeles of land. Page 86 of official catalogue. Begun by petition before subdelegate and judge of surveys and lands, Rafael Ortiz de la Torre. Petition admitted and order made by him for survey and other proceedings May 22, 1814. Receipt for payment signed by Escalante and Fuente December 28, 1821. Note on expediente that title had been issued July 8, 1824.

San Juan del Carrizo: One and three-quarters sitios of land. Page 107 of official catalogue. Petition addressed to Snr. Governor Intendente

Roxo. Petition admitted and order for survey and other proceedings signed by Roxo October 20, 1818. Proceedings referred to Promotor Fiscal by order of Riesgo dated November 18, 1824. Opinion of Promotor Fiscal addressed to Senor Comisario gral de Hacienda, January 7, 1825. Three almonedas, each signed by Juan Miguel Riesgo and Promotor Fiscal. Statement of interested party addressed to Snr. Comisario gral. de Hacienda, expressing satisfaction with proceedings. Statement signed by Juan Miguel Riesgo, dated January 10, 1825, styling himself Commissary-General provisional of Hacienda, public credit and war of the State of the West, that he had examined proceedings and found them regular, and ordering payment of money. Receipt for payment signed by Joaquin de Santa Cruz, Comisario of the section of Arizpe, July 8, 1825, that on page 21 of the Libro Manual of the Federation appears the entry of payment. Note on expediente that title had been issued January 28, 1825.

100 San Jose de la Noria: One and one-quarter sitios of land.

Page 119 of official catalogue. Petition addressed to Sor. Subdelegado Rafael Ortiz de la Torre. Order made by him September 22, 1812, for survey. Proceedings referred to Promotor Fiscal by Intendente Bustamante, December 6, 1821. Opinion of Promotor Fiscal to Bustamante December 7, 1821. Order for three almonedas signed by Bustamante, and three almonedas each signed by him and the Promotor Fiscal. Declaration by Bustamante of regularity of proceedings and order for payment of money, signed December 24, 1821. Receipt for money signed by Escalante and Fuente December 28, 1821. Note on expediente signed by Riesgo as Comisario-General that he had issued the corresponding title of sale and confirmation on November 15, 1824.

San Jorge de Babarocagui: One sitio of land. Page 124 of official catalogue. Petition addressed to Subdelegate Tiburcio Angel del Toledo. Petition admitted and order made by him May 6, 1811, for survey and other proceedings. Proceedings referred to Promotor Fiscal by Commissary-General Riesgo May 9, 1825. Opinion of Promotor Fiscal addressed to commissary-general, May 9, 1825. Order for three almonedas signed by Riesgo, and three almonedas each signed by him and Promotor Fiscal. Statement signed by Juan Miguel Riesgo, styling himself commissary-general provisional of the State, approving proceedings and ordering payment of money. Note on expediente that the corresponding title had been issued.

San Jose de Caguinagua: Three-quarters of a sitio of land. Page 124 of official catalogue. Petition addressed to Subdelegate Juan Daza.

Petition admitted and order made by him May 19, 1794. Proceedings referred to Promotor Fiscal by Commissary-General Riesgo December 5, 1824. Opinion of Promotor Fiscal addressed to commissary-general, December 6, 1824. Order for three almonedas signed by Riesgo and three almonedas each signed by him and Promotor Fiscal.

Statement signed by Juan Miguel Riesgo, with Jose Maria Mendoza as one of the assistants, styling himself commissary-general provisional of Hacienda, public credit and war, dated December 10, 1824, approving proceedings and ordering payment of money. At end of expediente is note that title had been issued on May 15, 1825.

San Jose de Tutugueachi : One sitio and one caballeria of land. Page 125 of official catalogue. Petition addressed to Subdelegate Daza. Petition admitted and order made by him February 21, 1820, for survey. Proceedings referred to Promotor Fiscal by Commissary-General Riesgo, December 5, 1824. Opinion of Promotor Fiscal addressed to Commissary-General December 6, 1824. Order for three almonedas signed by Riesgo, and three almonedas each signed by him and Promotor Fiscal. Statement signed by Juan Miguel Riesgo, with Jose Maria Mendoza as one of the assistants, styling himself Commissary-General Provisional of Hacienda, public credit and war of the State of the West, approving proceedings and ordering payment of money. At end of expediente is a note that title had been issued.

San Juan Bautista de Cochorime : Two sitios and seventeen caballerias of land. Page 133 of official catalogue. Petition addressed to Sor. Subdelegado Provisional Juan Daza. Petition admitted and order made by him for usual proceedings, May 20, 1795. Proceedings referred 102 to Promotor Fiscal by Commissary-General Riesgo November 18, 1824. Opinion of Promotor Fiscal addressed to Commissary-General Riesgo December 6, 1824. Order for almonedas signed by Riesgo, and the three almonedas each signed by him and by Promotor Fiscal. Statement signed by Juan Miguel Riesgo, styling himself Commissary-General of Hacienda, public credit and war of State of the West, approving proceedings and ordering payment. Note on expediente that title had been issued on December 11, 1824.

On petition of interested parties a copy of this expediente was issued to them by the Treasurer-General of the State of Sonora, December 7, 1888.

103 Bacusa : Two and one-half sitios and twenty-two thousand square varas of land. Page 15 of official catalogue. Expediente shows a petition addressed to the Commissary-General reciting that a grant had been made, and requesting the Commissary-General as the proper official to issue title. Petition dated April 29, 1826. Petition granted by Juan Miguel Riesgo. Note on expediente signed with rubrica of Riesgo that he had issued title on May 27, 1826.

Cobachi : Three and one-half sitios of land. Page 41 of official catalogue. Petition addressed to Commissary-General stating that parties had been in possession of lands and had paid for same, but had not obtained title, and asking that testimony of witnesses be taken as to these facts. On September 2, 1825, Juan Miguel Riesgo, Commissary-General, orders the testimony to be taken by the alcalde. Receipt for payment signed by Milla and Yberri, August 30, 1833. Note on expediente that title of sale was issued on August 30.

Merced de las Flores : One caballeria of land. Page 61 of official catalogue. Petition addressed to Senor Subdelegado Manuel de Vnea. Petition admitted by him dated Cualiacan, January 31, 1822. Proceedings referred to Promotor Fiscal by Riesgo, dated Fuerte, November 18, 1824. Report of Promotor Fiscal to the Commissary-General, December 6, 1824. Statement that interested party was notified of report of Promotor Fiscal, signed by Riesgo and Jose Maria Mendoza and Jose Quiroz, assistants. Three almonedas, each signed by Riesgo. Order that expediente be shown to interested party, signed by Riesgo, Fuerte, December

9, 1824. Acceptance of proceedings by interested party, addressed to Senor Comisario gral de Hacienda. Declaration of regularity of proceedings, signed by Juan Miguel Riesgo and Jose Maria Mendoza and Pedro Loniza, assistants. Notification to interested party and acceptance by him, signed by him and by Riesgo, Mendoza, and Jose Quiroz. Note on expediente that corresponding title had been issued.

San Miguel de la Huerta: One and one-half sitios of land. Page 96 of official catalogue. Petition addressed to Senor Intendente de Real Hacienda. Order made by Juan Miguel Riesgo, dated Fuertes, December 6, 1824, for survey and other proceedings, after which the expediente was to be returned to that Comisaria-General. Receipt for payment of value of the land signed by Jose Justa Milla, Treasurer-General of the State of Sonora, October 14, 1833. Note on expediente that title of sale had been issued October 14, 1833. The borrador recites that the petition was made before the Comisaria-General, and that it was admitted in conformity with law on December 6, 1824.

San Jose del Carrizo: Two and one-quarter sitios of land. Page 105 of official catalogue. Petition addressed to Sor Subdelegado Nicolas Mesias. Petition admitted and order for survey and other proceedings made by him January 15, 1823. Proceedings referred to Promotor Fiscal by Riesgo, dated December 4, 1824. Opinion of Promotor Fiscal addressed to the Senor Comisario-General, December 6, 1824. Order to proceed to the three public almonedas, signed by Riesgo, and three almonedas each signed by Riesgo and the Promotor Fiscal. Statement signed by Juan Miguel Riesgo, dated December 10, 1824, styling himself Comisary-General Provisional de Hacienda, public credit and war, that he had examined proceedings and found them regular, and ordering interested party to pay the money. Note on expediente signed with rubrica of Riesgo that he had issued title of sale May 15, 1825. The expediente of this grant contains the statement, a certified copy of which, under date of April 24, 1894, is furnished by the treasurer-general of Sonora.

San Antonio de Padua (á) El Paso de Crisanto: Four sitios of land. Page 106 of official catalogue. Petition of Dionisio de Aguilar to Senor Comisario-General of the State of the West, dated June 25, 1825, reciting loss of expediente and praying that testimony of witnesses be taken.

On June 26, 1825, Riesgo, Commissary-General, directs the proceedings prayed for to be taken, and for the interested party to present them in due form. On August 25, 1825, order made, signed by Riesgo, referring proceedings to Promotor Fiscal. Opinion of Promotor Fiscal, dated August 25, 1825, addressed to the Comisario-General. Order signed by Juan Miguel Riesgo as Commissary-General August 26, 1825, that title be issued in accordance with opinion of Promotor Fiscal. Note on expediente signed by Riesgo as Commissary-General that he had issued the title of sale and confirmation on August 27, 1825.

San Antonio del Alamito: One-quarter of a sitio and eight caballerias of land. Page 118 of official catalogue. Petition addressed to Senor Subdelegado Favela. Petition admitted by him and order for survey and other proceedings, dated Sinaloa, December 18, 1823. Proceedings

referred to Promotor Fiscal by Riesgo, dated Fuerte, November 20, 1824. Opinion of Promotor Fiscal addressed to Senor Commissary-General, December 6, 1824. Order signed by Riesgo to proceed
 106 to the three public almonedas, and three almonedas each signed by Riesgo and the Promotor Fiscal. Statement signed by Juan Miguel Riesgo as Commissary-General, Provisional of Hacienda, public credit, and war of the State of the West, approving proceedings and ordering payment to be made. Note on expediente that title was issued December 11, 1824.

San Antonio de la Cienega y la Mora: Two sitios of land. Page 118 of official catalogue. With the expediente of this grant is found the following communication, signed with rubrica of Riesgo. "The Commissary-General. In the expediente, which exists in the Commissary's office under my charge, it is stated that the lands of the places called San Antonio de la Cienega and La Mora, within the jurisdiction of Culiacan, were sold with all the requisites established by law in favor of Don Jose Verdugo y Chaves, who paid in, on January 30, 1824, its value in this Treasury. By reason of which payment I have issued the title and have it in my possession, because the representative of owner has not presented himself to take it out. Wherefore the right of Don Jose Verdugo y Chaves being incontrovertible, I communicate this to you in answer to your inquiry of July 4 last, adding that if anybody should desire a certified copy of the said expediente I am ready to furnish it in accordance with the laws. July 13, 1825. Sr. Alcalde 1 de la Ciudad de Culiacan." Rubric of Riesgo.

San Felipe de Toyvapa: One sitio, half a cabalaria, and seven cordeles of land. Page 119 of official catalogue. Petition addressed to Subdelegate Manuel Favela. Petition admitted and order for survey and other proceedings made by him May 9, 1823. Proceedings referred to Promotor Fiscal by Riesgo, December 4, 1824. Opinion of Promotor Fiscal addressed to the senior Commissary-General December 6, 1824.
 107 Order to proceed to the three almonedas, signed by Riesgo, and three almonedas, each signed by him and assistants. Statement of Juan Miguel Riesgo as Commissary-General Provisional of Hacienda, public credit, and war, dated December 10, 1824, approving proceedings and ordering party to make payment. This order signed also by Jose Maria Mendoza, assistant. Note on expediente, signed by Riesgo, that the corresponding title of sale had been issued May 15, 1825.

San Rafael de Juriquipa: One sitio of land. Page 120 of official catalogue. Petition addressed to Senor Intendente Juan Miguel Riesgo. Petition admitted and order made for survey and other proceedings signed by him at Arizpe, May 12, 1824. Survey and thirty pregones made as usual, and proceedings referred to Promotor Fiscal Jose Maria Mendoza by Riesgo, December 4, 1824. Opinion of Promotor Fiscal to Riesgo as Commissary-General, December 6, 1824. Order for three almonedas, signed by Riesgo, and three almonedas each signed by him and the Promotor Fiscal, Mendoza. Statement by Juan Miguel Riesgo, dated Fuerte, December 10, 1824, styling himself Commissary-General, Provisional de Hacienda, public credit, and war, of the regularity of the proceedings, and ordering payment of money. Note on bottom of expediente signed with rubric of Riesgo that he had issued title of sale on May 15, 1825,

and made record of same in book 2, on page 3. The expediente of this grant contains the statement, a certified copy of which, under date of April 24, 1894, is furnished by the Treasurer-General of Sonora.

San Ignacio (á) Las Cuevas: One sitio of land. Page 121 of official catalogue. Petition addressed to Senor Intendente and Juez
108 Privativo de Tierras Riesgo. Petition admitted and order for survey and other proceedings made by him May 27, 1824. Proceedings referred by Riesgo to Promotor Fiscal, December 5, 1824. Opinion of promotor fiscal to Riesgo as Commissary-General, December 6, 1824. Order for three almonedas, signed by Riesgo, and three almonedas each signed by him and assistants. Statement of Riesgo, signed at Fuerte, December 10, 1824, styling himself Commissary-General of Hacienda, public credit, and war, approving proceedings and ordering payment of money. Note on expediente that the corresponding title of sale had been issued.

109 Cuchuta: Eight sitios of land. Page 37 of official catalogue. The copy of this expediente shows that title was issued by Ignacio de Bustamante, intendente, on May 19, 1823.

Nuestra Sra. de los Dolores: One sitio of land. Page 70 of official catalogue. Begun by petition before the Intendente-General, who, by order of June 7, 1778, put party in possession of land, ordering that it should be surveyed as soon as practicable. Receipt of payment signed January 30, 1824, by Gabriel Romo only, on account of indisposition of his colleague. Note on expediente, signed by Juan Miguel Riesgo as intendente of the province, that he had issued the corresponding title of sale and confirmation on July 23, 1824.

San Elisario (á) el Bamuco: One and one-half sitios of land. Page 118 of official catalogue. Begun by petition before Subdelegate Carpina. Petition admitted and order for survey and other proceedings made by him November 5, 1818. Receipt of payment signed by Fuente and Mendoza, October 16, 1823. Note on expediente, signed by Riesgo as Intendente of the province, that he had issued the corresponding title of sale and confirmation on November 15, 1824.

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EXHIBIT D.

At Hermosillo, Sonora, April 24, 1894, in the archives of the office of the treasurer-general of the State of Sonora, in Book LXXIII, I find a letter written and signed by Jose Maria Mendoza, of which the following is a translation:

ARIZPE, November 20, 1830.

Sr. VICTORIO ZEPEDA.

MY DEAR SIR AND FRIEND: The Commissary-General of this State has charged me with the delivery to the respective interested parties of several titles of grants and their confirmation of lands surveyed, appraised, auctioned off, and adjudged by the treasury of the federation before the classification of revenues, after having first received the fifty dollars of fees which each one is subject to, and there being amongst said titles that of the place called El Alimillo, situated in the jurisdiction of the pueblo of Cucurpe, which the late Don Fernando de Bustamante entered in your name in April, 1820. I communicate this to you that you may be

pleased to take it out from the section of the treasury under my charge with the least possible delay. Wherefore I beg you to do this.

Your attentive and most affectionate and true servant, Q. B. S. M.,

JOSE MARIA MENDOZA.

I found a similar letter of same date to D. Francisco Narvona y Agustin Bejarano, regarding ranch of Batana, denounced in August, 1822; a similar letter of same date to Sr. Francisco Robles, regarding ranch of Los Pillares, denounced in June, 1821; similar letter of same date to Sr. D. Fernando Ma Grande, regarding ranch of Terrenate, registered in May, 1822. All these letters contain the same statement that the lands were surveyed, appraised, sold at public auction, and adjudicated by the treasury of the federation before the classification of revenues.

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EXHIBIT E.

(Seal.) Republic of Mexico. Treasurer-General of the State of Sonora. Two cancelled stamps of fifty cents each.

Victor Aguilar, Treasurer-General of the State of Sonora, Republic of Mexico.

I certify that in the archives of this treasury there exists a document of which the following is a copy:

ARISPE, *January 16, 1831.*

SEÑOR DON RAMON ROMERO.

MY DEAR SIR AND FRIEND: The office of the Commissary-General of this State has enjoined upon me the delivery to the respective interested parties of several titles of sale and confirmation of lands surveyed, appraised, sold by auction, and adjudged by the treasury of the federation before the classification of revenues, after receiving payment of the fifty dollars fees due on each; and there being among said titles that of the place called San Rafael de la Zanja, which was sold at auction in favor of yourself and other residents of this presidio on January 10, 1822, I notify you thereof that you may take it out from the section of the treasury under my charge as soon as possible, according to this, my request.

Yours respectfully, Q. B. S. M.,

J. M. M.

In testimony whereof I give this certificate in Hermosillo, on the 5th day of February, 1895.

V. AGUILAR.

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EXHIBIT F.

(Seal.) Republic of Mexico. Treasurer-General of the State of Sonora. Two cancelled stamps of fifty cents each.

Victor Aguilar, Treasurer-General of the State of Sonora, Republic of Mexico.

I certify that in the expediente of San José del Carrizo, issued in the year 1825, there exists on the last page an entry, as follows:

"José María Mendoza, Comisario of the Treasury of Arizpe, in the State of Sonora and Sinaloa: I certify that on page 23 of the book of debits and credits (cargos y data) for the current fiscal year there exists

the following entry: May 2. Sale of public lands, forty-eight dollars, two reales, seven grains, paid in by Don Jose Antonio Garcia, a resident within the jurisdiction of Rio Chico, in these words: Forty-two dollars for the original valuation at which the said lands were sold at public auction by the Comisaria-General of this State on the 9th day of December, 1824, being two and a quarter sitios of land which were surveyed by the federation on and since the 18th day of January, 1823, for the raising of cattle and horses at the place called San Jose del Carrizo, situate within the said jurisdiction, in the district of Hostimuti; two dollars, three reales, ten grains, as the half-yearly tax, with the customary eighteen per cent; six reales, two grains, for the two per cent due the general fund, and the remaining three dollars for the fees of the extinguished auditor's office (contaduria del Ramo); charges which have invariably been made on all the sales of public lands like the one of which this document speaks, on account of the treasury of the federation, prior to the classification and delivery of revenues, which law went into force in this State on the 1st day of November, 1824, since which date the revenue from lands denounced, surveyed, bounded, auctioned, and possessed prior to the said first day of November has been considered one of the revenues comprised in article 12 of said law. It is to be observed that the interested party, Don Jose Antonio Garcia, at the time of making said payment, of which a receipt was given him for his protection, stated that the cause of the delay was caused only by employing a man who did not comply with his duty in time, although he had been employed ever since the year 1825. This is a true extract of the original order in the matter, called for under order No. 14. \$048, 2, 7. Mendoza. José Antonio Garcia. And to whom it may concern: This is given in Arispe on 2nd day of May, one thousand eight hundred and thirty-one. José Maria Mendoza. [Rubric.]

Given in the city of Hermosillo on the twenty-fourth day of the month of April, one thousand eight hundred and ninety-four.

V. AGUILAR.

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EXHIBIT G.

(Seal.) Republic of Mexico. Treasurer-General of the State of Sonora. Two cancelled stamps of fifty cents each.

Victor Aguilar, Treasurer-General of the State of Sonora, Republic of Mexico.

I certify that in the expediente of San Rafael de Juriquipa, issued in the year 1824, there exists, on the last page, an entry as follows:

"Jose Maria Mendoza, Comisario of the section of the Treasury of Arispe in the State of Sonora: I certify that on page 31 of the book of debits and credits (cargos y data) for the current fiscal year there exists the following entry: June 16. Sale of public lands, thirty-five dollars, three reales, paid in by Da. Maria Gregoria Finoco, widow of D. Juan Lafarga, in these words: Thirty dollars for the original valuation at which was sold at public auction by the Commissary-General of the State on December 9, 1824, in favor of said Lafarga, a sitio of land for the raising of cattle, embraced in the place called San Rafael de Juriquipa, situate within the jurisdiction of the pueblo of Oputo, and in the district of this city; being six reales, two grains, as the half-yearly tax, with the customary eighteen per cent; four reales, ten grains, for the two per

cent due the general fund, and the remaining three dollars for the fees of the extinguished auditor's office (contaduria del Ramo), ordered to be added to the general treasury fund, which have always been charged in all the sales of vacant public lands made by the public treasury, for their survey, measurement, appraisement, and auction before the classifications of revenues. It is to be noted that the interested party, when making this payment, of which I gave her a receipt, declared that she could not make such payment until now, because her husband had died leaving a family of minor children and she was put to great hardship to provide for them. This is a true extract of the original order of the commissary in the matter which accompanies order number 22. \$35, 3, 0. And to whom it may concern: This is given in Arispe on the 16th day of June, one thousand eight hundred and thirty-one. Jose Maria Mendoza. [Rubric.]

Given in the city of Hermosillo on the 24th day of the month of April, one thousand eight hundred and ninety-four.

V. AGUILAR.

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EXHIBIT H.

To the treasurer-general: The inhabitants of this place who hold the titles to the lands of San Rafael de la Zanja, measured in their favor, have always tried to stock them and to erect upon them their buildings of corrals and other improvements needed by a breeder of stock. The frequent incursions of the enemy have caused them to refrain from taking these steps, and inasmuch as in consequence thereof there might be attributed to them at some time an abandonment (of said lands), and from this there might result a motive for filing on said land, they have requested me to consult you in the matter whether if they erect the said structures within the ejidos (common lands) of the presidio, at the distance of about one league, more or less, you would declare and consider them as erected upon the said sitios granted, of which this speaks, until the time shall arrive when the country will be at peace; and that you will, in view of the explanation here given, and inasmuch as they will begin in the month of February next to proceed with the work, please to answer me telling me whether any structure erected within the ejidos will answer the same purpose as though erected upon the lands granted, by reason of the above-stated circumstances; and if the matter should not be so considered I wish you would have the kindness to inform me of it, that these inhabitants may know how they stand in the matter, and may act in the manner most appropriate. God and liberty.

Santa Cruz, January 27, 1836.

(Signed)

PABLO FRAYJO.

To the Treasurer-General, Don JOSE MA. MENDOZA.

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EXHIBIT A.

Title of grant of four sitios of land for raising cattle (cuatro sitios de tierra para cria de ganado mayor) embraced in the place named San Rafael de la Zanja, situated in the jurisdiction of the presidio of Santa Cruz, issued in favor of Don Ramon Romero and other "parcioneros," citizens of the same presidio.

(Second seal. 12 reales. Treasury-General of the State of the West. Years 1825 and 1826.)

Juan Migual Riesgo, Commissary-General of the Treasury, public credit, and war, of the State of the West.

Whereas article 81 of the ordinances of intendentes of the 4th of December, 1786, conferred upon those officers the administration and jurisdiction of the measurements, sales, and granting of lands in their respective districts, the tenor of which is as follows:

Article 81. The intendentes shall also be exclusive judges of the dependencies and causes which occur in the districts of their respective provinces in relation to the sales, compositions, and distribution of royal lands and de senorio (public lands); it being required of their possessors and of those who petition for new grants of them to set forth their rights and institute their claims before the same intendentes, so that these matters, being legally prepared in conjunction with a promotor (attorney) of my royal treasury, whom they may appoint, may be decided upon, the opinion of their ordinary assessor being heard, and they may admit appeals to the supreme junta de hacienda; or, if the parties interested do not appeal, they shall communicate to it the original proceedings for its information, when they shall judge these proceedings ready for the issuing of the title. After having been examined by the junta they shall be returned and the title issued, unless some difficulty occur, and thus before executing it the measures found to be neglected by the junta shall be observed. The proper confirmations shall, in consequence, be given by the same superior junta in due time, which shall proceed in the case, as also the intendentes, their subdelegates, and others, in conformity with the royal regulation of the 15th of October, 1754, as far as it may not be opposed to the requirements of the latter, without losing sight of the wise dispositions of the laws cited therein (Law 9th, title 12, lib. 4).

And inasmuch as Don Manuel Bustillo, a citizen of the presidio of Santa Cruz, on the 19th day of July, 1821, petitioned the governor intendente of Sonora and Sinaloa, Brigadier Don Antonio Cordero, for four sitios of land for raising cattle (cuatro sitios de tierra para cria de ganado mayor) at the place known as de la Zanja, situated in the jurisdiction of the same presidio; which petition was admitted according to law, and a commission issued to the commandant of the presidial company, Captain Don Simon Elias Gonzales, to make the corresponding survey, which petition, decree, and act of acceptance are as follows:

To the GOVERNOR INTENDENTE: I, Don Manuel Bustillo, a resident of the presidio of Santa Cruz, before your honor, with the proper respect and in due form of law, appear and say that having a considerable amount of stock, and needing a tract of land for their preservation, I denounce and ask leave to purchase at auction three sitios of land in the same presidio in which I reside, and outside of the boundaries thereof, on the side of the north, and one sitio more for an "estancia" in the place of the ejoncito, on the side of the east. Wherefore I pray your honor that for the measurement of the said tract of land you be pleased to issue the necessary orders to the proper officers, and that the commissioner may take into consideration in its valuation that the tract of land asked for borders upon the country of the Apaches, who are constantly hostile.

I therefore pray your honor to be pleased to grant my petition, in which I shall receive favor and justice, swearing that I do not act in bad faith, and to whatever is necessary.

To the GOVERNOR INTENDENTE.

MANUEL BUSTILLO.

ARIZPE, *July 19, 1821.*

The foregoing petition is presented and admitted without prejudice to third parties who may have a better right.

The commandant of the company of Santa Cruz will proceed to the measurement of the lands hereby registered, summoning the adjoining land owners and appointing expert appraisers who shall value the same impartially; publication to be made for thirty days for the purpose of soliciting bidders; and when all the necessary proceedings shall have been taken in the premises, the expediente shall be transmitted to this "juzgado privativo," for the necessary proceedings, in order that the corresponding title may issue thereon.

CORDERO.

Act of acceptance.

SANTA CRUZ, *October 4, 1821.*

Don Manuel Bustillo, of this vicinity, having presented the foregoing decree, issued on the 19th of July, ultimo, by the Senor Governor Intendente, Brigadier Don Antonio Cordero, I said that I accepted, as I at once did accept, the commission contained in the foregoing decree, where-

(Fourth seal. Un cuartillo. Treasury General of the State of the West. Years 1825 and 1826.)

upon I ordered that the party interested and the neighboring landowners be summoned, and accompanied by the necessary officers, who are named. I appoint to-morrow as the day for the commencement of the measurements of the four sitios for raising cattle in the place called la Zanja, as before stated. By this decree, which shall be made known to the parties interested, I, the Commissioner, Don Simon Elias Gonzales, captain of the company of the Presidio, thus provided, ordered, and signed with the assisting witnesses, as required by law, in the absence of a notary.

SIMON ELIAS GONZALES.

Asst. LORENZO SORTILLON.

Asst. RAMON ROMERO.

Immediately the commandant proceeded to summon the party and the neighboring landowners, and to appoint the respective officers, who were Don Jose Antonio Calvo as counter, Tomas Guana as notor, and Felipe Jaramillo and Leandro Romero as measurers, who, under oath, swore to discharge their duties faithfully, to the best of their ability; and after an examination of the tract of land the measurements were made on the 5th and 6th days of the month of October, in the manner shown by the following proceedings:

Beginning of survey.

On the said day, month, and year, I, the said commissioner, for the purpose of commencing the survey of the four sitios for raising cattle

denounced by Don Manuel Bustillo, of this vicinity, delivered a hempen cord, well twisted and stretched, to the officers appointed, and also a castilian vara, on which cord there were measured and counted in my presence fifty usual varas, and this operation being concluded, a stake was attached to each end of said cord; and being at the central point as fixed by the denouncer, which point is named San Rafael, the petitioner asked that since the place of Los Cajoncitos, which is petitioned for, has been recognized as being within the common lands of the presidio (of Santa Cruz) it should be added to the three sitios for which he had petitioned, which request appeared just; whereupon the measurement was commenced, the line being run towards the north, in which direction were measured two hundred cords, which terminated on a mesa on the bank of an arroyo which runs towards the peñasco, at the foot of an oak tree, upon which was made a cross, and at the trunk of which a large pile of stones was placed as a sign for a monument. Returning to the center, there were measured two hundred cords towards the south, which terminated at the mouth of the Cañada of the Protero, at the same point at which is found the monument of the common lands of this presidio on the side of the north. Returning to the center, there were measured and counted towards the east two hundred cords, which terminated beyond the said Cañada of the Protero on a contiguous mesa, where a large pile of stones was placed as a sign for a monument; and returning to the center there were measured and counted towards the west one hundred and thirty-three cords, for the reason that the sixty-seven cords required to make the two hundred cords could not be measured on account of the roughness of the tract of land; these were, therefore, estimated, the estimated line terminating on a high mountain situated in the range of the Sierra de la Plomosa, almost southwest of the hill called "El Caloso," the summit of which was taken to designate a monument. Whereupon, it being late in the day, the proceedings were suspended to be resumed to-morrow. In witness whereof I make this entry in the proceedings, which are signed by me, the assisting witnesses, the officers appointed who knew how to write, together with the interested party in the ordinary manner.

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SIMON ELIAS GONZALES.
ANTONIO CALVO.
MANUEL BUSTILLO.

Asst. LORENZO SORTILLON.
Asst. RAMON ROMERO.

Continuation of the survey.

At the said place of San Rafael, on the 6th day of the said month and year, I, the said commissioner, together with the officers appointed, in order to make the corresponding cords of the lands measured on yesterday, went to the place at which the two hundred cords terminated on the north, from which monument we estimated, on account of the roughness of the track of land, two hundred cords towards the east, which terminated beyond a spring known as "carricillo," at the point of the Sierra del Cobre (copper mountain), at which point a corner monument is to be placed. In the same manner two hundred cords were estimated, on account of the roughness of the tract of land, towards the west to the

foot of a red mountain, which was designated as a landmark, which mountain stands in an open place

(Seal as before.)

between the peñasco and the mountains of Sonoyta; from this point four hundred cords were estimated towards the south upon the Sierra de la Plomosa to a point beyond the pass of San Antonio, where there are two small mountains which designate the corner on the side of the west of the common lands of this presidio, and which point is to serve as a corner monument of these sitios; from this point there were measured and counted two hundred cords towards the east, the line terminating at the monument on the northern boundary of the said common lands (of the presidio) which is found at the mouth of the Cañada of the Protrero; from which point, continuing the square, there were measured two hundred cords towards the east, which terminated on the Jaralito, at the corner monument of the said lands of the presidio; from which point four hundred cords were estimated towards the north on account of the roughness of the tract of land, which ended beyond the spring "el carrisillo," with which measurements was formed the square of the four sitios registered by Don Manuel Bustillo for raising cattle, and as such he accepted them, being informed that in due time he was to establish his boundaries with monuments of lime and rough stone, as required by law; signing with me the officers appointed who knew how to write, and the assisting witnesses in the ordinary form.

SIMON ELIAS GONZALES.
MANUEL BUSTILLO.

Asst. LORENZO SORTILLON.
Asst. RAMON ROMERO.

Whereupon the commandant proceeded to the corresponding appraisal by means of intelligent experts, who were Don Alejo Bedoya and Tomas Guana, who, under the oath which they made in due form of law, in accordance with the knowledge which they had of the whole of the tract of land, and in accordance with the laws in relation to the matter, placed the value of sixty dollars on each of the three sitios which contained permanent water, and of thirty dollars upon the remaining one, for the reason that it is susceptible of benefit only by means of a well. With this valuation the commandant of Santa Cruz offered the said four sitios for sale at public auction for thirty consecutive days soliciting bidders. No bidders appeared, and he received the sworn testimony of three witnesses, who declared that Don Manuel Bustillo possessed sufficient means to stock the tract of land. In this condition the expediente was transmitted to the intendencia, which by decree of the 11th of December, 1821, referred the same to the promotor fiscal (attorney-general), whose report thereon is as follows:

Señor intendente interino. The promotor fiscal (attorney-general) of this intendencia has carefully examined this expediente of lands surveyed in favor of Don Manuel Bustillo, a resident of the presidio of Santa Cruz, by the commissioner, Don Simon Elias Gonzales, captain and

commandant of said presidio, in the place named San Rafael de la Zanja, in the same jurisdiction from which there resulted four sitios for raising cattle and horses, which were appraised, by two experts appointed for that purpose, at sixty dollars for three of them, because they contain running water, and the fourth at only thirty dollars, because it has need of water, and can be benefited only by a well, which two sums make two hundred and ten dollars, and having offered them at public auction for thirty consecutive days, no one offered more than the said appraisement.

Whereupon the testimony of three witnesses was taken, which 118 showed that the petitioner, Bustillo, possessed means to stock said tract of land. The promotor fiscal therefore asks you to cause the three public offers of sale to be made at public auction in this capital, inviting bidders and selling the tract of land at the highest possible price; the purchaser to be notified that he is to pay into this national treasury the total value of said lands, their half yearly tax, eighteen per cent express charges, two per cent general impost, and the three dollars for the officers of the abolished contaduria (auditor's office); the necessary certificate showing that these payments have been made to be issued and attached to the expediente, advising the superior junta of the same, that it may take such steps as may be deemed proper. This is my opinion, subject, however, to your determination.

FRANCISCO PEREZ.

ARISPE, December 20, 1821.

The intendencia having approved the foregoing report of the promotor fiscal (attorney-general), the first offer of sale at auction was made on the 8th of January, 1822, on which occasion Don Ramon Romero appeared for himself and in the name of the residents of the presidio of Santa Cruz, and bid ten dollars above the appraisement of the tract of land, and immediately Don Manuel Bustillo outbid the same; after this they

(Seal as before.)

went on bidding against each other alternately until the price was run up to twelve hundred dollars, this being the bid made by Don Ramon Romero.

The two remaining public offers of sale were made on the 9th and 10th of said month, and, no higher bids being made, the said four sitios of land embraced in the place of San Rafael de la Zanja remained solemnly sold to the said Don Ramon Romero and the citizens of Santa Cruz. Whereupon the expediente was transmitted to the said Romero, who replied in writing that he was satisfied with all that had been done, and that he would pay into the national treasury the sum required, and would receive the corresponding title of sale and confirmation. In virtue of which a decree was made, the tenor of which is as follows:

Decree.

In the city of Arizpe, on the 11th day of the month of January, 1822, the señor intendente ad interim of this province of Sonora and Sinaloa, Don Ignacio de Bustamente, having examined the foregoing proceedings

of survey, appraisement, offers, auctions, and sale of the four sitios of royal land for raising cattle, comprehended in the place called San Rafael de la Zanja, in the jurisdiction of the presidio of Santa Cruz, and sold to Don Ramon Romero and other citizens of that military post; in view also of Romero's written answer and all other matters necessary to be considered, he declared that said proceedings were in all respects regular and sufficient, and considering that the said Don Ramon Romero and citizens of Santa Cruz are debtors to the national treasury for the said tract of land, he had notified him, the said Romero, to pay into the public treasury of this city the sum of \$1,297, 6 reales, and 5 grains, in the following manner: \$1,200, the amount for which this intendency sold said land; \$70, 6 reales, and 5 grains as the half-yearly impost, and the remaining \$3 as an impost of the abolished auditor's office of this treasury. As soon as these payments shall be made and the corresponding certificate thereof attached to this expediente, the same shall be forwarded to the superior junta de hacienda for its approval or such action thereon as may be deemed proper. Thus ordered, decreed, and signed, with the assisting witnesses, in the absence of a notary.

IGNACIO DE BUSTAMENTE.

Asst. JOSE MA. MENDOZA.

Asst. JOAQUIN ELIAS GONZALES.

As soon as said Romero was notified of the foregoing proceedings, and in view of the approval thereof by the provincial junta of the extinguished intendencia of Sonora and Sinaloa, the interested party, on the 11th day of the said month of January, made the required payment into the national treasury of Arizpe, the ministers of which issued the following certificate:

The principal ministers of the national treasury of Arizpe and its province. We certify that on folio 3d of the manual book of the present year the following entry is found:

Half-yearly tax of lands. January 11. Don Ramon Romero, acting for himself and the other citizens of the presidio of Santa Cruz, has paid \$1,297, 6 reales, 5 grains, in the following manner: \$1,200 as the price for which this intendencia has sold him the four sitios of royal land for raising cattle, which comprehend the place called San Rafael de la Zanja, situated in the jurisdiction of the said presidio; \$70, 6 reales, 5 grains as the half-yearly tax and its 18 per cent express charges to Spain; \$24 as the two per cent of general imposts, and the remaining \$3 as a tax of the extinguished auditor's office of this treasury, as is explained by the official note of this intendencia, marked No. 1. \$1,297.6.5.

Escalante.

Fuente.

Ramon Romero.

In witness whereof we give this certificate, at Arizpe, on the 11th of January, 1822.

TOMAS DE ESCALANTE.

MIGUEL MA. DE LA FUENTE.

The above certificate having been added to the expediente, the same remains on file in the office of the commissary under my charge as a perpetual testimony; the proper title being issued to the parties interested, the superior junta de hacienda of Mexico having been abolished.

Wherefore, using the faculties expressed in the foregoing inserted article 81 of the ordinances of intendentes, and conforming in every respect to the instruction of the 15th of October, 1754, in so far as it is not opposed to the present system, by these presents, in the name of the sovereign nation of the Mexican Republic (which may God preserve), I grant the four sitios of land for raising cattle which comprehend the place called San Rafael de la Zanja, situated in the jurisdiction of the presidio of Santa Cruz, to Don Ramon Romero and other citizens interested, of the same military post; granting and adjudicating to them the said tract of land by way of sale and under the conditions prescribed by the laws, for themselves, their children, heirs, and successors; with all its entrances, exits, uses, customs, servitudes, timbers, forests, grazing lands, waters, springs, watering places, and other things appertaining thereto, on the positive and express condition that they are to settle and occupy said lands without permitting them to be unoccupied for any length of time, with the express understanding that if said lands should be abandoned during one entire year and should be denounced by any other person, they shall, after due examination of the matter, be adjudicated to the highest bidder, excepting, as is but just, any cases in which the abandonment may be caused by the hostile Apaches, who harass the frontier. Don Ramon Romero and the citizens of Santa Cruz are also required to confine themselves within their respective limits and boundaries, which they are to designate by monuments of stone and lime.

And as required in the proper administration of justice and in the enforcement of the laws, the present and future alcaldes and judges of the presidio of Santa Cruz and district of Arizpe shall not permit the said interested parties or their successors to be in any manner molested in the free use, enjoyment, ownership in fee, dominion, and possession of the said four sitios of land comprised in the place called San Rafael de la Zanja, but, on the contrary, they shall zealously and actively guard and continually maintain them in the quiet and peaceable possession of said lands. In these terms I issue the present title of sale and confirmation in due form in favor of said Don Ramon Romero and parcioneros, their children, heirs, and successors, delivering it for their security, record having been previously made in the corresponding book. Given in the village of Fuerte on the 15th of May, 1825, authorized and signed by me, sealed with the seal of this general commissary and countersigned by the undersigned, provisional secretary of the same. (Notation of corrections: Inserted between lines: "Tomas Guana par apuntador;" Corrected: "espresado, 1821, provincial, por hallarse;" remainder correct.)

JUAN MIGUEL RIESGO.

JOSE MA. MENDOZA,
Provisional Secretary.

[SEAL.] Commissary-general of the State of the West.

This title is recorded on folio 3 of book No. 2, which exists in this general commissary. R.

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EXHIBIT I.

Translation of document in the archives of the government of Sonora, at Hermosillo, Sonora:

OFFICE OF THE SECRETARY OF THE STATE CONGRESS.

MOST EXCELLENT SIR: Based upon the law concerning the classification of Federal revenues, and upon subsequent data, the honorable Congress, in article 47 of the decree No. 23, declares that the right to issue confirmations of lands is one of the revenues of the State. The regulation of that branch was a consequence of this declaration. While this regulation was under advisement, the observations arrived which the commissary-general makes in his letter of the 26th of the past month, and which your excellency had the kindness to transmit to us, together with another letter, of the 21st of the *dame* month. They refer to those presented under date of December 13, in which said chief officer expresses doubts as to whom the proceeds of that sale belong, and about which he consulted from that time forward the General Government. The decision for which he asks has not yet come, and the honorable Congress has waited three months for it—a sufficient time for it to have arrived. This silence alone, without there being any need for other reasons which might be here alleged, confirm the opinion and convey the conviction that the said right of confirming land titles belongs to the State, and the harm which might result to the State in the present depletion of its treasury by keeping this branch in a state of paralysis was another motive towards the issuance of the said declaration.

Done in to-day's session of the honorable Congress, and so communicated to your excellency in order that you may transmit this resolution to the aforementioned commissary-general, who shall at the same time be notified that if, after the usual procedure in such cases, it should be declared that the branch of public lands did not form a part of the State revenues, the national treasury is to be reimbursed in the amounts collected by the treasury of the State. By this order your letter of the 27th of last April is now answered. May God have you in His keeping many years.

Fuerte, May 9, 1825.

TOMAS ESCALANTE,
Deputy Secretary.

JOSE DE JESUS ALMADA,
Deputy Secretary. [Rubricas.]

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EXHIBIT J.

In the Court of Private Land Claims.

| | |
|--------------------|---------------------------------------|
| MAISH & DRISCOLL | } No. 6. Canoa and Buenavista grants. |
| <i>vs.</i> | |
| THE UNITED STATES. | |

Conveyances vesting title in Maish & Driscoll to Canoa grant.

1. Thomas Ortiz to Maish & Driscoll. Deed dated November 18, 1876. Recorded Nov. 18, 1876, Book 3, R. E., page 607, Pima County,

Arizona. Consideration, \$1,100. Conveys his one undivided half of the premises described above. Deed duly acknowledged.

2. Will of Tomas Ortiz, filed in office of U. S. surveyor-general February 12, 1880.

3. Ignacio P. Ortiz and Ana M. Ortiz, heirs at law of Ignacio Ortiz, to Maish & Driscoll. Deed dated August 13, 1883. Recorded August 13, 1883, Book 8, R. E., pages 690, 691, and 692.

4. Joseph M. Yancey and Ana J. Ortiz de Yancey, his wife, heir at law of Ygnacio Ortiz, to Maish & Driscoll. Deed dated August 30, 1883. Recorded Sept. 11, 1883, Book 12, R. E., pages 23 & 24. Recites the death of Ignacio Ortiz, and as heir at law conveys all right, title, and interest to an undivided $\frac{1}{2}$ of the premises described above, as does deed last above set out from Ignacio P. Ortiz and Ana M. Ortiz to Maish & Driscoll, each of said deeds being duly acknowledged.

5. Narsizo Martinez and Mariana Ortiz de Martinez, his wife, heirs at law of Ignacio Ortiz, to Maish & Driscoll. Deed dated August 21, 1883. Recorded Sept. 11, 1883, Book 12, R. E., pages 1 & 2. Recites the death of Ignacio Ortiz, and as heir at law conveys all right, title, and interest to an undivided one-half of the premises described above. Consideration, \$750. Deed duly acknowledged.

C. W. WRIGHT,
ROCHESTER FORD,
Attorneys for Maish & Driscoll.

No. 6 (F. No. 17). Maish & Driscoll *vs.* United States. Derailment of title to Canoa grant. Filed in the office of the clerk Court of Private Land Claims. Filed March 10, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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EXHIBIT K.

Principal administration of stamped paper of Sonora.

Seal, fourth
Biennium of

One real.
1852 and 1853.

Habilitated in conformity with article 41 of the law of November 23, 1836. Ures, February 3rd, 1853.

No. 6557. Note was taken at folio 3 of the proper book.

LUCAS ARVIZU. [Rubric.]

MANUEL SANCHEZ. [Rubric.]

To the TREASURER-GENERAL:

We, Francisca Fernandes, widow of the late Captain Francisco Villaseca, and Jose Elias, as agent of Don Tomas Ortiz, as per the accompanying letter of attorney, duly and respectfully present ourselves before your excellency and state that a few days ago Don Joaquin Quiroga surveyed some lands in the jurisdiction of Tubae for Don Joaquin Astiazaran, as we have learned, in which he included the lands of San Ignacio de la Canoa, without citing or hearing us, perhaps because he did not know they belonged to private property. We do not forward to your excellency the title of property that proves this our dominion in order

not to expose this document to the peril of the road, but we have the honor to inclose a certificate which proves its existence. In view of this:

We pray the well-accredited justification of your excellency to declare as void the said survey of Quiroga in the part which has been prejudicial to us, that is to say, in all the land which is not of that which he has taken from our parties, since in this it is a matter of justice we ask, protesting that we do not proceed in bad faith, etc.

Hermosillo, May 7, 1853.

(Signed)

JOSE ELIAS. [Rubric.]

At the request of Mrs. Francisca Fernandes,

JOSE M. SERMENO. [Rubric.]

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EXHIBIT L.

Principal administration of stamped paper of Sonora.

Seal fourth
Biennium of

One real.
1852 and 1853.

Habilitated in conformity with article 41 of the law of November 23rd, 1836. Ures, February 3rd, 1853.

No. 6554. Note was taken at folio 3 of the proper book.

LUCAS ARVIZU. [Rubric.]

MANUEL SANCHEZ. [Rubric.]

I, Jose Toribio Menendas, alternate alderman of this city, certify that Don Jose Elias and Mrs. Francisca Villasecusa, widow of the late Captain Don Francisco Villasecusa, have presented to me a title to a grant of four sitios of land compromised in the place called San Ignacio de la Canoa, in the jurisdiction of Tubac, issued in favor of Don Ignacio and Don Tomas Ortiz, which document is executed in due legal form by the treasury-general of the State, on the second day of the month of February of the year eighteen hundred and forty-nine, which I have returned to the parties in interest after having made this minute, which at their request I execute in said city of Hermosillo on the seventh day of the month of May, eighteen hundred and fifty-three, which I sign with my attending witnesses.

(Signed)

J. MENANDES. [Rubric.]

Attending witness:

JOSE MARIA PEREZ. [Rubric.]

Attending witness:

JUAN J. ENCINAS. [Rubric.]

124

EXHIBIT M.

TUCSON, April 20, 1853.

MR. JOSE ELIAS:

BELOVED NEPHEW: I write you this informing you that having a tract of land called San Ignacio de la Canoa, 4 leagues distant from Tubac, on the highway to this colony of Tucson, and my brother Ignacio having sold his part to the late Captain Don Francisco Villasecusa,

he left the expediente with him, said Villaescusa. I beg you to go to the house of the widow of said Villaescusa and ask her for the expediente to present it to the treasury or to the commissioner of the survey, Don Joaquin Quiroga, who resurveyed said land in favor of the governor, Don Manuel Maria de Gandara. I have not been notified to appear with the expediente to defend my boundaries, and so, if it appears best to you to do it as my agent, you can present it in my name to the treasury before the term of 90 days expires, although I do not know when it expires, since it was surveyed; first, because I was not notified; second, because I was in Tubtama. I knew from the outside sources that it was surveyed, and I have also known that the survey of Sopori has not yet been concluded, because they were short of animals; and so it is that you may tell me how I ought to do it, or send me a rough draft of the manner in which I ought to present it, whether to the treasury or to the commissioner of the survey, or do it yourself directly, as agent; and you will ask the giver of this at what time he departs, that you may reply to me in regard to the matter.

I also beg of you to inform me of political affairs; here nothing is known; or send me some printed matter. I entreat you to do for your uncle as much as may be in your power, or tell me that I may not err. I would go with friend Juan Elias, but we are without an animal and the roads so critical because of the enemy. and with best regards to the cousin and the rest of the family, command your uncle, who esteems you and wishes for you the greatest happiness.

(Signed)

THOMAS ORTIZ. [Rubric.]

125

An exhibit for the U. S. (Not marked.)

Testimony of Jesus Maria Elias.

JESUS MARIA ELIAS, first being duly sworn by the surveyor-general, deposed as follows in response to interrogatories by the United States surveyor-general:

Q. 1. What is your name, age, place of residence, and occupation?

A. Jesus Maria Elias; age, fifty-one years; reside in Tucson; farmer by occupation.

Q. 2. Do you know of a ranch in Arizona by name "El Sopori" and alleged to have been granted to Joaquin de Astiazaran?

A. I know the ranch of Sopori as alleged to have been granted to Joaquin de Astiazaran.

Q. 3. How many leagues are embraced in said rancho?

A. I do not know how many square leagues it contains. I only know the boundaries as marked out by the surveyors sent by Astiazaran and Cubillas. From north to south it is about eight leagues.

Q. 4. Do you know when the said rancho was measured in pursuance of the alleged proceeding under the Mexican Government for title?

A. I do. It was measured about the last of December, 1848, or about the first of January, 1849.

Q. 5. Do you know who made such measurements?

A. I do. Joaquin Quiroa, surveyor; Juan Manuel Levara, Leonardo Oroasco, and Alphonso Figueroa, assistants. There were other persons present, but I do not remember their names.

Q. 6. Do you know where the aforesaid measurers placed the boundary monuments to mark "El Sopori" ranch?

A. I know the monuments on the north.

126 Q. 7. Where did you reside when the said measurements were made?

A. I resided in Tucson.

Q. 8. Where were you at that time?

A. I was at San Xavier, stopping over night, when the said measurers came in from making their measurements. They stopped in the same house I did, and I heard them talking about said measurements.

Q. 9. Was it then understood among the Mexican people that a grant of "Sopori" was made in good faith?

A. It was generally understood at that time among officers and military men that the grant was not made in good faith but in anticipation of a change of government.

Q. 10. What has been the opinion of well-informed Mexican people since 1848 or 1849 regarding the validity of said "El Sopori" grant?

A. Prior to 1848 the land of "Sopori" was considered as belonging to the community of Tubac. From 1848 to the present time, among intelligent people of the country, the opinion has been general that these measurements were made without any right, in anticipation of the future profit that might be derived therefrom. It was understood that the said measurements of "Sopori" were made for Astiazaran and Cubillas.

(Signed)

JESUS MA. ELIAS.

Subscribed and sworn to before me this 29th day of November, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,
United States Surveyor-General.

OFFICE OF SURVEYOR-GENERAL,
Tucson, Ariz., April 3, 1895.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[SEAL.]

LEVI H. MANNING,
U. S. Surveyor-General, District of Arizona.

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EXHIBIT BB.

GUAYMAS, *July 8th, 1857.*

JOHN R. BARTLETT, Esqr.,
Providence, R. I.

MY DEAR SIR: It was my intention to have written you immediately on my arrival here in March last, but constant occupation at first & sickness afterwards have prevented me from doing it until to-day.

During my absence of one year many changes had taken place in Sonora, and a revolution of a most pernicious influence in general had just terminated, leaving this poor country in a most deplorable condition, affecting our commercial, agricultural, and mining enterprises most

unfavorably, and leaving our working classes in great misery from their extreme poverty. Matters were improving, nevertheless, gradually and our prospects brightening. With the beginning of last April a Mr. Henry Crabb presented himself at Caborca, near the frontier of our State, at the head of some eighty men in a filibustering expedition; rumors of his departure from California had reached us previously, as also that he would be followed by other friends by sea. Although no formal preparations of resistance were made, still there was a sufficient force near Caborca to completely annihilate Crabb and his band, all of which, except those killed in battle, were executed on the following day of their capture, thus setting forth a terrible example to future expeditionists. Our government fearing that this party of Crabb's was only the vanguard of a more formidable band, concentrated at Alcar a considerable force, 128 composed principally of volunteers or "Guardia Noche," as also in this port preparatory of an attempt by sea. Fortunately for all, this has terminated with the tragical "finale" of Senator Crabb, but as our armed forces consisted principally of our working classes, they have not yet fairly returned to their occupations, and we are still experiencing the evil effects of this latter calamity. One of our principal evils has in a manner been reduced (I have reference to the repeated disastrous incursions of the Apaches) from the presence on this frontier of the American military post under command of Major Stein, and we may hope that in the course of a few years we will feel the beneficial effects of the presence of our American neighbors.

Since my return numerous and various have been the reports of the sale of this State and others to your Government, and we have once or twice been induced to believe that there was some truth in the statements, but the result is that nothing of the kind has thus far transpired, nor is there a probability of a treaty of such a nature being agreed to by our present president, Cumrefort, who is likely again to be elected for November next, his views in this matter having been expressed publicly, and they certainly are not favorable to the prospect of those who desire the sale of our State. This circumstance, and that of the slow progress of the grand project of the Pacific Railroad, have contributed here to maintain the value of our extensive properties in the various districts of this State and of the Gadsden purchase in statu quo. We presume that, matters being very much the same with you, you will not have made much progress in the negotiation of our property, the title deeds of which you have in your possession; nevertheless, we would be most happy to have you express 129 your views as regards the practicability of negotiations of some nature. As we are confident that at some future day *day* all this property must be of immense value, we lose no opportunity of extending our rights over other tracts which we consider of worth; we have just purchased the lands called San Ignacio de la Canoa. You are well acquainted with this tract, as you passed through it on your way from Tubae to Tucson.

We now beg to hand you annexed the following documents, that in case of necessity may serve you to further substantiate the legality of our titles:

A certificate of our present Governor, Licenciado Jose de Aguilar, and duly legalized by the French consul of this port, testifying that the "Paso

de los Algodones" was legitimately granted to Fernando Rodrigues by Jose Justo Milla, then legally in charge of general treasury of the State, also testifying to the signature of Jose Ma. Mendoza, attached to such document.

Another certificate of our present governor testifying to the same points in the titles of "San Ignacio de la Canoa."

Another from the same person concerning the "Sopori" tract.

Also one from the French consul certifying that we have had no American consul in the port since the year 1854. Finally we inclose—

Certified copy of the title deed of the property called "San Ignacio de la Canoa."

We have not been able to inform ourselves with certainty where these titles of property now in the American territory should be registered, consequently we have thus far taken no steps towards affecting the same, and we now have to beg of you that if it be in your power you have such titles registered and entered before the competent authorities, and if this can not be from the absence of sufficient powers from us, 130 we then have to request that you will at your earliest convenience instruct us as to the mode of proceeding to be enabled to properly legalize our titles in conformity with the laws of the United States. In the event of a period having been fixed for the final presentation of such title before certain authorities, and which might expire before it would be in our power to comply with the same, we have to ask of you the favor to take necessary measures in the premises for the protection of our interests. We are all of us convinced that unless we with our own capital put into negotiations our lands and mines their value can not be enhanced, except through the want of a railroad, military post, or Govt. colonization being established in them or in their vicinity, but as such event we fear are still distant. Could you not suggest some mode of employing profitably some part of our valuable tracts of land, through sale or otherwise, or the establishment of a company with sufficient capital for the working of our mines, particularly that of the "Ajo," its richness and abundance of metals being a sufficient inducement for a profitable enterprise. Have you no friends who would wish to employ their capital with a sure result of profit, once put into train all our operations? To such persons we could make very liberal concessions of our rights and interests. Please take earnestly into consideration our observations and indicate to us some means of profitably employing our property. As I mentioned to you when I had the pleasure of a personal interview, we do not expect you to exert yourself and spend your valuable time and influence in our behalf without a certain remuneration, and we are most willing to compensate liberally your services, interesting you in our properties proportionately.

Your vocabulary of Indian languages has been sent to the bishop 131 of Lower California, as a person most capable of such a task, whom we have requested to furnish us as early as possible the requisite information, and when received it shall be duly forwarded you.

With the kindest regards of my father and of Mr. Cabillas, and expecting soon to hear from you, I remain, dear sir, yours, very truly,

THOS. ROBINSON.

This goes by the way of San Francisco to be forwarded you by express. Should you have communications of interest to send us, we would suggest their being remitted to San Francisco to the care of Messrs. Peck, Rodgers & Co., our agents there, who will have the same sent us immediately.

Please bear in mind that in possession of Messrs. John Warren & Sons, of Wall street, New York, you have at your disposal a small case of the sample metals of our mines.

Upon second consideration we deem it essential that the certified copies of the titles of property we own within the limits of the United States be registered in some public office to enable us to refer to them in case of loss, doubt, or any other unforeseen event. Therefore I would feel particularly obliged to you if you would take the pains to have the titles I left with you, also those of the Canoa and the corresponding certificates now annexed, formally registered in the land office in the city of Washington or in some other office of registry in the capital, taking receipts or certificates of such registry in duplicates, sending me one of each
132 at your earliest convenience. This may not be the proper course to adopt, but it will show a desire on our part to comply with the registry law, and when a regular office of registry is established in the Gadsden Purchase we can again enter our titles, referring to the registry already made at Washington.

Since writing the foregoing we have received further valuable documents strengthening our titles of the Sopori and Paso de los Algodones tracts, which we annex herewith. You will observe that these vouchers consist of certificates given by ex-general treasurer of this State, Sr. Jose Ma. Mendoza, and in them he states in virtue of what decrees and laws these concessions were legitimately made. Both of these certificates are testified to by the French consul of this port.

It is hereby stipulated that the signature of Thos. Robinson to the foregoing letter is genuine.

ROCHESTER FORD,
Attorney for Maish & Driscoll,

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EXHIBIT CC.

Ex. E, June 16, 1881.

U. S. SURVEYOR-GENERAL'S OFFICE,
Tucson, Arizona, September 16, 1880.

EDWARD M. SHEPARD, Esq.,

Atty. "Sopori," Land & Mining Co., 120 Broadway, New York City.

DR. SIR: In reply to your inquiry of the 1st instant as to "what" course is likely to be taken in the "Canoa," I have to say:

1. The attorneys for Maish & Driscoll and the Ortiz heirs have requested time to investigate the facts concerning the conveyances to the *Canoa* to your company, and as I could grant them some months and still get my supplemental report before Congress in December, I have verbally permitted them to take such time, without any exact limitation.

2. Not later than November 1, ensuing, I shall forward a supplemental report in the "Canoa" Case, and recommend confirmation to the legal representatives of the original grantees, deeming this the wisest course.

It is not at all likely the attorneys aforesaid will indicate to this office an entire abandonment of their clients' claim or title to the land, and unless they should it would be of no advantage to your company for me to recommend confirmation to it. I shall accompany my report with certified copy of your petition, and present reasons for the change in my recommendation. Should the attorneys for Maish & Driscoll and the Ortiz heirs file an amended petition or brief in the case, I will, as a matter of course, forward copy duly certified. Your company having presented the original expediente, I shall so state, and also state that if any doubt before existed as to the validity of the grant, it is now removed.

In reply to yours of the 6th instant, received this morning, I have to say that Mr. Hopkins has not given any testimony in "Sopori" Case, and it is not my purpose to put him in the attitude of a witness in it. My letter to you yesterday contains the important facts obtained and reported to me by Mr. Hopkins under special orders from me directing him to make a critical inspection of the original papers and records in Hermosillo, &c.

Very respectfully,

JOHN WASSON, *Sur. Genl.*

(Endorsed :) No. 37. E. 16 June, 1881. Recorded in Journal, vol. 3, page 389, 390.

OFFICE OF SURVEYOR-GENERAL,
Tucson, Arizona, March 26th, 1895.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[SEAL.]

LEVI H. MANNING,
U. S. Surveyor-General, District of Arizona.

It is hereby stipulated that the supplemental report referred to in the foregoing letter was not made, so far as is shown by the records of the surveyor-general's office.

ROCHESTER FORD,
Attorney for Maish & Driscoll.

135

EXHIBIT DD.

Sello tercero.

Cuatro reales.

Años de mil ochocientos cuarenta y ocho y mil ochocientos cuarenta y nueve.

Digo yo, Ygnacio Ortiz, vecino del pueblo de Tubutama y residente en la actualidad en esta capital, que por la presente otorgo quedo á, y traspaso por rason de venta, y enagenacion perpetua desde *haora* para siempre en favor del Sor. capitan y agudante Ynspe'tor D. Francisco Villacescusa, igualmente residente en la misma ciudad, la parte media de cuatro sitios, que en vnion de mi hermano D. Tomas, tenemos registrados en el paraje nombrado San Ygnacio de la Canoa, en comprehencion del presidio de Pimas de Tubac, desde el año de 1821 -y hasta el 2 de febrero del año corriente se nos espidido el correspondiente titulo, el que entrego al comprador, por la cantidad de ciento y cincuenta pesos, que á mi entera satisfac'ion tengo recibido en vestas mulares, por haverme asi

combenido, asegurandole al citado comprador, qe. la parte del enpresado rancho, no reconose gravamen ni pencion alguna, asi como que los citados ciento, y cincuenta pesos, en la especie q. arriva es preso es el justo y legitimo valor del susodicho rancho; pero q. si mas valiere por cualesquiera otra razon, del eseso ó demacia, en poca ó mucha cantidad, hago gracia, y donacion al comprador, y á los que en derecho le sucedan; renunciando en cuanto al mas ó menos de su valor, la ley de ordenamto. real fho. en Alcalá de Henares, fuintamte. con los cuatro años que el derecho concede pa. pedir la recision ó suplemento del contrato. Y en fé de todo lo espuesto, me desapodero, quito, y aparto, asi como á todos los mios del derecho dominio y propiedad que reconocia sobre el enunчиado rancho, y todo lo sedo renuncio y traspaso como llevo dho. en el comprador quien á mas de haser el uso qe. le pareciere de dicho

136 rancho, podra enagenarlo segun su voluntad, en el concepto, de que para mayor seguridad del contrato me someto de grado, con mis vienes havidos y pr. haver al conscimiento, de los Sres. Jueses que de mis causas puedan conocer, y en especial á los de esta ciudad pa. q. al cumplimiento de todo lo espuesto, me conplar y apremien, como si fuera por sentencia dada en autoridad de cosa juzgada consentida, y no apelada, renuncio la ley, escambenerit &a., el fuero de domicilio y vecindad, con las generales del derecho, asi lo otorgo en esta escritura estrajudicial, á la ques es mi voluntad sele de toda su fée y fuersa en esta ciudad, de Ures á los nueve dias del mes de febrero de mil ochocientos cuarenta y nueve, ante los testigos presenciales que lo son mi hermano D. Tomás, D. Franco. Lamadrid, y D. Miguel Heredia.

YGNACIO B. ORTIZ. [Rubrica.]

TOMAS ORTIZ. [Rubrica.]

FRANCO. [Rubrica.] LAMADRID. [Rubrica.]

MIGL. EREDIA. [Rubrica.]

Contiene una escritura de traspaso qui hizo Dn. Ygo. Ortiz al Capitan Dn. Franco. Villaescusa de la parte que tenia en cuatro sitios nombrados las Canoa.

137 (Endorsed:) Sopori Co. paper, introduced in San Ygnacio de Canoa Case. Recorder's office, Tucson, Pima County, A. T. Filed and recorded at request of E. M. Shepard, June 21st, A. D. 1881, at 10 a. m., book 10, deeds R. E., pages 413, 414, 415, and 416. Chas. R. Drake, county recorder.

"La Canoa." Recorder's office, Tucson, Pima County, A. T. Ignacio Ortiz to Francisco Villascusa. Filed and recorded at request of E. M. Shepard, June 28, A. D. 1880, at 2.30 p. m., in book 7, Deeds Real Estate, pages 117, 118, 119. S. W. Carpenter, county recorder, by W. S. Read, deputy. Filed Sur. Genl's Office, Arizona, July 17, 1880, 2.30 p. m. I. R. Farrell, chief clerk.

138 EXHIBIT DD. (TRANSLATION).

Contains a deed of conveyance executed by Mr. Ygnacio Ortiz to Captain Francisco Villaescusa relating to the title he held to half of four ranches known as La Canoa.

(Here is a stamp seal.)

I, Ygnacio Ortiz, resident of the town of Tubutama, formerly but at present in this city, hereby depose, in all due form of law, that it is my free will and volition to sell and transfer and perpetually to convey, on behalf of Captain Francisco Villaescusa, also a resident of the same city, of half of my title in four ranches, which I own and possess jointly with my brother Mr. Tomas Ortiz, we had laid a claim to, situated in the place known as San Ygnacio de la Canoa, within the radius of the military post of Tubac, as far back as 1821, and it was not until the 2nd day of February of this year, the corresponding title thereto was not issued to us, for the sum of one hundred and fifty, which amount I hereby acknowledge to have received in full and satisfactorily, in the shape of a certain number of mules, since this manner of payment was the best suited to my purposes, guaranteeing that my share in the aforementioned ranch is entirely free and unincumbered and likewise that the price of one hundred and fifty dollars, in the manner in which I have preferred to take, is the just and legitimate worth of said ranch; but if it were worth more even, of such excess or balance I hereby freely donate on behalf of the buyer and his legal successors, renouncing all lawful exceptions in of sellers of this kind of property, as well as the period of four years conceded by law, to demand the rescinding or supplement of contracts. And in attestation of all the foregoing, I hereby withdraw, retire, and quit myself, and all of mine, from all contact,

interference, or concern therein to which I laid claim heretofore,
 139 in said ranch, dispossessing myself in behalf of the buyer, who, besides making whatever use he may see fit of the said ranch, managing it at will, sell, exchange, and donate the same at his volition; pledging myself of my own free will, with all my present and future possession, liable before any court of law for any counter-claim, urging upon all judges, present and future, the summary enforcement of any lawful claim against me arising therefrom, as if it were a cause adjudged and whose verdict had already been entered without appeal. Finally, I freely renounce the right of domain and residence, with all general ones in behalf of the seller or settler; thus it is my wish to consign in this extrajudicial document, which it is my desire to give to all the legal force and binding effect, in this city of Ures, on the 9th day of February, eighteen hundred and forty-nine, before witnesses who signed it with me.

YGNACIO B. ORTIZ.

TOMAS ORTIZ.

FRANCISCO LAMADRID.

MIGUEL HEREDIA.

A Sopor Co. Paper introduced in the San Ygnacio de la Canoa Case.

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EXHIBIT EE.

Matias Moran, escribano publico nacional, Estado de Sonora. (Cin-cuenta centavos. Revenue stamp. Hermosillo, junio 4 de 1881.)

Matias Moran, escribano publico nacional y con officia abierto en esta ciudad, la de Ures y el puerto de Guaymas desde el año de 1857 hasta esa fecha:

Certifico que conoci perfectamente durante su vida y personalmente, á los Señores Ygnacio B. Ortiz, Tomas Ortiz, Francisco Lamadrid y

Miguel Eredia, el primero de los que aparecen en el adjunto documento y traspaso, como vendedor, y los demás como testigos suscritos; que todos los dichos individuos, han fallecido; que les vi escribir y firmar en diversas ocasiones conozco perfectamente bien la letra y firma da cada uno de dichos individuos, en fin, que conozco y creo que el nombre "Ygnacio B. Ortiz" suscrito en dicho documento y traspaso como vendedor, es de puño y letra del Señor Ygnacio B. Ortiz, y que los nombres "Tomas Ortiz, Francisco Lamadrid y Miguel Eredia," suscritos como testigos en dicho documento y traspaso, so' respectuamente de puño y letra de dichas personas; que aunque no me consta ocularmente que dichos individuos fallecieran, tal circunstancia llegó á mí noticia por algunas personas que los conocieron y me dijeron que habian muerto.

Ygualmente certifico que he examinado dicho documento y traspaso adjunto y lo encuentro extendido en la forma y con los requisitos legales, siendo el documento expresado, válido en todos respectos y título perfecto.

Y para que obre la fé necesaria donde convenga á pedimento del Señor lianciado, J. Hampden Dougherty, extendiendo la presente en la ciudad de Hermosillo, capital del Estado de Sonora, Republica Mexicana á los cuatros dias del mes de junio del año de mil ochocientos ochenta y uno, firmado de mi puño y sellado con el sello de mi oficia publico.

MATIAS MORAN, [Rubric.]
E. P. N.

[L. S.]

(Matias Moran, escribano publico nacional, Estado de Sonora.)

(Seal of consulate of the U. S., Guaymas, Mexico.)

CONSULATE OF THE UNITED STATES,

Consular District of Guaymas, Mexico, ss:

I, Alexander Willard, consul of the United States for Guaymas, Mexico, and the dependencies thereof, do hereby certify that on this fourth day of June, A. D. 1881, at Hermosillo, Sonora, and within my consular jurisdiction and district, before me personally appeared Matias Moran, of said city, to me personally known, and who signed the foregoing deposition in my presence, who being by me duly sworn did depose and say that the contents of the foregoing deposition are in all respects true.

In witness whereof I have hereunto set my hand and the seal of said consulate, at Hermosillo, this fourth day of June, A. D. 1881.

A. WILLARD,
Consul.

(Seal of consulate of U. S. at Guaymas, Mexico.)

142

EXHIBIT FF.

1858.

Escritura de venta de dos sitios de tierra para cria de ganado mayor y caballada en el punto llamado "La Canoa" sito en el territorio de los Estados Unidos de Gadsden Purchase entre las poblaciones de Tubae y Tucson, Otorgada por Don Juan Moreno á nombre de su esposa y demás

herederos menores de su finado padre político Don Francisco Villaescusa, á favor de Don Fernando Cubillas.

Oficio publico y de hipotecas del partido de Hermosillo en el Estado de Sonora.

143 No. 78 para actuaciones.

Sello segundo.

Habilitado para los años de mil ochocientos cincuenta y ocho y cincuenta y nueve.

Valle cuatro pesos.

Administracion principal de Sonora. Guaymas, agosto 10 de 1858.

M. PANDE.

THOS. ROBINSON.

En la ciudad de Hermosillo á las trece dias del mes de noviembre de mil ochocientos cincuenta y ocho, ante mi el infrascrito escribano nacional y publico y testigos que se espresarán, compareció Don Juan Moreno, mayor de edad y vecino del pueblo de Seris, y dijo : Que a nombre de su esposa y demás herederos menores de su padre político el finado Don Francisco Villaescusa, de quienes es tutor y de cuyo testamento es el primer albacea, dá en venta á Don Fernando Cubillas, así mismo mayor de edad y vecino del puerto de Guaymas, dos sitios de tierra para cria de ganado mayor y caballada en el punto llamado "La Canoa," sito en el territorio de los Estados Unidos de Gadsden Purchase entre las poblaciones de Tubac y Tucson, cuyos dos sitios están comprendidos en un titulo de consecion de cuatro sitios dados á los Señores Don Tomas y Don Ygnacio Ortiz por las autoridades de este Estado de Sonora, cuyo lituo de consecion ha entregado ya al espresado Señor Cubillas ; que los límites de dicho terreno están espresificados en el referido titulo de consecion, y por tal motivo no hay necesidad de fijarve en esta escritura, cuyos terrenos declara que no están vendidos, esta genados ni hipotecados, y como tales se los vende con todas sus entradas y salidas, usos, servidumbres y demás cosas anexas que han tenido, tienen y les pertenecen segun derecho, por la cantidad de quinientos pesos que tiene recibida á su entera satisfacion, tomo lo jura en solemne forma de que

144 doy fé, y como pagado y satisfecho de ella, mormaliza á favor del comprador la más eficaz carta de pago que á su seguridad conduzca, con espresa renunsiacion de la ley novena, titulo primero, partida quinta. Así mismo declara que la espresada cantidad de quinientos pesos, es el justo y verdadero valor de los mencionados dos sitios, cuyo dominio y propiedad renuncia, cede y traspasa, á favor del enunciado Don Fernando Cubillas para que disponga de ellos como cosa suya, adquirida con justo y legitimo titulo, y para que tome la posesion que de dere'ho le corresponde ; y finalmente se obliga á la eviccion y saneamiento de esta venta en legal forma. Y en el mismo acto Don Fernando Cubillas dijo : que aceptaba esta escritura en todas sus partes, obligando ambos otorgantes al cumplimiento de lo que en ella se espresa, todos sus bienes presentes y futuros, declarando que no habia lesion ni engaño, y que si la hubiese en mucha ó conta cantidad, se hacen mutuamente donacion pura é irrevocable, renunciando la accion y el termino que para ejercitarla les conseden las leyes. Así lo dijeron y firmaron los señores otorgantes á quienes doy fé conozco, habiendoles advertido que de esta escritura debia tomarse razón en el oficio de hipotecas de este partido dentro de ocho dias, bajo pena de unilidad, siendo testigos Don Lorenzo

Aguayo, Don Romulo Morales, y Don José Bernal, residentes y vecinos de este lugar; doy fé.

JUAN MORENO,
F. CUBILLAS.

Testigo: LORENZO AGUAYO.

Testigo: ROMULO MORALES.

Testigo: JOSE BERNAL.


Ante mi. MATIAS MORAN,
Escribano Nacional y Publico.

Se sacó del protocolo de instrumentos publicos de mi cargo despues de su otorgamiento para entregar al comprador. Y en fé de ello, yo, el infrascrito escribano nacional y publico, vecino de la ciudad de
145 Ures y residente en esta, doy la presente copia original que signo y firmo en dos pojas de papel del sello segundo bienio corriente, quedando su matriz, a que me refiero, en el registro del sello tercero, y anotada en el esta saca, que es dada el mismo dia de su otorgamiento.

Corregido.

En testimonio de verdad.

MATIAS MORAN,



E. N.
Y. P.

[Rubric.]

Queda tomada razon de esta escritura en el officio de hipotecas de este partido, que es a mi cargo, desde la poja 2, vuelta a la 3, frente del libro respectivo.

Hermosillo Noviembre 13, de 1858.

MATIAS MORAN.
E. N.
Y. P.

(Endorsed:)

"La Canoa." Recorder's office, Tucson, Pima County, A. T. Widow and heirs of Francisco Villaescusa to Fernando Cubillas. Filed and recorded at request of E. M. Shepard, June 28, A. D. 18 at 2.30 p. m., in book 7 Deeds, Real Estate, pages 125, 126, 127, 128. S. W. Carpenter, county recorder, by W. S. Read, deputy. Filed Sur. Genl's Office, A. T., July 17, 1882, 2.30 p. m. J. R. Fanell, C. C.

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EXHIBIT FF (TRANSLATION).

Indenture of conveyance of the ranches devoted to stock raising in the place known as "La Canoa," within the territory of the United States, at Gadsden Purchase, between the post of Tubac and Tucson, executed by Mr. Juan Moreno, in representation of his wife and heirs at law of his late father-in-law, Mr. Francisco Vaillaescusa, in behalf of Mr. Fernando Cubillas. Recorder of mortgages, of Hermosillo County, in the State of Sonora.

In the city of Hermosillo, on the thirteenth day of November, eighteen hundred and fifty-eight, before me, the undersigned notary public, and requisite number of witnesses, hereinafter cited, Mr. Juan Moreno, whom I know to be of age and a resident hereat, deposes, to wit, that in representation of his wife and other heirs at law of his late father-in-law, Mr. Francisco Vaillaescusa, who' tutor he is, and of whose will, he, the executor and administrator, hereby give in public sale to Mr. Fernando Cubillas, resident of Guaymas, two ranches, suitable for stock raising, in the place known as "La Canoa," situated in the territory of the United States at Gadsden Purchase, between the posts of Tubac and Tucson, the foregoing two ranches being part and parcel of a grant of a certain tract of land, comprising four ranches, awarded to Messrs. Tomas and Ygnacio Ortiz by the State of Sonora, and which has been delivered into the keeping of the forementioned Mr. Cubillas; furthermore, that the boundary lines of said parcel of land are set forth in the above title of grant, and for said reason it would be superfluous to detail in this conveyance; declaring that said land has not been sold to anyone else, and is neither pledged, mortgaged, or incumbered in any manner whatsoever, and that

147 as such the deponent sells it, with all its rights, usages, means of ingress and egress, and all other appurtenances thereto, according to law, in consideration of the sum of five hundred dollars, which deponent declares to have received to his entire satisfaction, as solemnly sworn to, which I hereby attest, and as in ful' receipt thereof the deponent records this indenture of conveyance, with unqualified renouncement of law ninth, first title, fifth section; furthermore, declares the forementioned sum of five hundred dollars to represent the maximum worth thereof, whose domain and proprietorship hereby renounces, cedes, and conveys to Mr. Fernando Cubillas, to dispose thereof as his own, acquired under just and legitimate right, to take possession thereof, as legally entitled; finally, deponent pledges himself to cause said possession to be given, ejecting all other holders, tenants, &c., with all the means he stands in possession of or may at any future time acquire; disclaiming all fraud and deception, and that should there result any discrepancies in his favor the same are freely conceded and donated to the purchaser, as all exceptions and immunities accruing to holders of such property under the laws. Thus deponent expressed himself, and was notified that this deed of conveyance should duly recorded at the register of mortgages and liens, within eight days from date. I hereby attest the foregoing in all due form of law.

JUAN MORENO.
F. CUBILLAS.

Witnesses:

LORENZO AGUAYO.
ROMULO MORALES.
JOSE BERNAL.

Before me.

MATIAS MORAN, *Notary Public.*

The foregoing is a true copy of the original recorded on the third stamp seal book on application of the purchaser. I hereby attest the foregoing.

MATIAS MORAN, *Notary Public.*

The foregoing has been duly entered upon the records at this register of mortgages, at Hermosillo, November 13th, 1858.

Given under my hand, &c.

MATIAS MORAN, *Notary Public.*

148

EXHIBIT GG.

Sello tercero.

Cuatro reales.

Años de mil ochocientos cincuenta y cuatro y mil ochocientos cincuenta y cinco.

En la ciudad de Hermosillo, á once de diciembre de mil ochocientos cincuenta y cuatro, ante mi, el escribano y testigos que se espresaran comparecieron Don Tomas Ortiz y Don Fernando Rodrigues, ambos mayores de edad y vecino el primero del Tucson y el segundo de esta ciudad y dejaron: Que consutrando sus reciprocos intereses tienen concertadada la venta de dos sitios de cria de ganado mayor que el primero posee y están sitos en el rancho nombrado "La Canoa," jurisdiccion del precidio de Tubac en la frontera; que dichos dos sitios pertenecen al otorgante por haberlos registrado junto con otros dos sitios en union de su hermano segun consta de los titulos respectivos que no presenta por estas en los pueblos de su residencia, pero que oportunamente mandaro al comprador un tanto de los espresados titulos para su resguardo; que dicho rancho linda por el norte con la mision de San Javier, por el sur con el precidio de Tubac y por el oriente y poniente con el Sopori; y todo lo que mas por menor resulta de los espresados titulos, en virtud de los cuales pertensean dichos dos sitios al espresado Don Tomas Ortiz en pleno dominio. Y para llevar á efecto la referida venta en la via y forma que mas haya lugar en derecho, el referido Don Tomas, otorga: Que dá en venta Don Fernando Rodrigues, los mencionados dos sitios; que declara no tenerlos vendidos, ni enagenados ni hipotecados, que están libre de toda clace de responsabilidad y gravamen, y como tal los vende con todas sus entradas, salidas, partos, maderas, aguages, usos, costumbres, servidumbres y demas cosas anexas que han tenido tienen y les pertensien segun derecho,

149 por la cantidad de ciento cincuenta pesos que ha recibido á su satisfaccion, y como tal y pagado y satisfecho el vendedor Don Tomas Ortiz, formalira á favor de Don Fernando Rodriguez la carta de Pago, y renuncia la ley 9, tit. 1º, p. 5. Asi mismo declara que la espresada cantidad de ciento cincuenta pesos es el justo y verdadero valor de los dichos sitios cuyo dominio y propiedad renuncia, cede y traspasa en favor del mencionado Rodrigues, para que disponga de ellos como cosa cuya con justo y legitimo titulo y para que tome la posecion que de derecho le corresponde; y finalmente se obliga á la eviccion y sancamiento de esta venta. En seguida y estando presente Don Fernando Rodriguez, dijo: Que aceptaba esta escritura en todas sus partes, obligando ambos otorgantes al cumplimiento de lo que en la misma se espresa, todos sus bienes presentes y futuros, y declarando que no habia lesion, ni, engano, y que si la hubiese en mucha ò corta cantidad, se hacen mutuamente donacion pura é irrevocable renunciando la accion y el termino que para ejercitarla les conceden las leyes. Asi lo dijeron y firmaron los señores otorgantes, á quienes doy fé conozco, habiendoseles advertido que de esta escritura debian tomar razón en el oficio de hipotecas de esta ciudad dentro

de los seis dias que senalo la real pragmatico y leyes de la materia, a cuyo requisito ha de precedes el pago de alcabala, sin el cual no se puede sacar la copia antorisada siendo testigos Don Angel San Martin, Don Eduardo Morales y Don Santos Ortiz, vecinos de esta ciudad.

TOMAS ORTIZ.
F. RODRIGUEZ.

Testigo: ANGEL SAN MARTIN.

Testigo: E. MORALES.

Testigo: SANTOS ORTIZ.

Ante mi:

JESUS GONZALES MENESES,
Escribano Publico de la Nacion.

Sacose de su registro, hoy dia de su otorgamiento; va fielmente corregido y consertado en dos pojas utiles del sello tercero.

150 Sello Tercero.

Cuatro Reales.

Años de mil ochocientos cincuenta y cuatro y mil ochocientos cincuenta y cinco.
bienio corriente.

La testimonio de verdad.

JESUS G. MENESE.

[Rubric.]

E. P. de la N.

Formada la razon en el oficio de hipotecas de esta ciudad, al folio sesenta y cuatro vuelta del libro respectivo. Hermosillo, Diciembre quince de mil ochocientos cincuenta y cuatro.

JESUS G. MENESE. [Rubric.]

Dros. sin el papel ocho pesos cuatro reales.

MENESES. [Rubric.]

(Endorsed:) Recorder's office, Tucson, Pima county, A. T. Filed and recorded at request of E. M. Shepard, June 28, A. D. 1880, at 2:30 p. m., in Book 7 Deeds, Real Estate, pages 119-122. S. W. Carpenter, county recorder, by W. S. Read, deputy.

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EXHIBIT GG (TRANSLATION).

(Here is a stamp seal.)

In the city of Hermosillo, on the eleventh day of December, eighteen hundred and fifty-four, Messrs. Tomas Ortiz and Fernando Rodrigues

appeared before me, deposing to be both of age, the former, resident of Tucson, and the latter, of this city, and that in furtherance of their interests they have agreed to sell two ranches for stock raising belonging to the former, in the place known as La Canoa, within the jurisdiction of the post of Tubac upon the frontier; that said ranches belong to deponent by reason of his having entered joint claims for two others with his brother, as per tenor of the original titles, which he does not exhibit, as they are at present in the town where he resides, but that op'ortunately he will deliver them to the buyer a true legal copy thereof for his protection; that said ranch borders on the north with the San Javier Mission, on the south with the post of Tubac, and on the west and east with the Sopori; and in every other particular the relator is fully in possession of, by virtue of which he does claim full domain; and in order to consummate said sale in due form of law, said relator conveys and gives in sale to Mr. Fernando Rodrigues the two mentioned ranches, which he declares not to have sold, pledged, or mortgaged to anyone else, and are perfectly unincumbered, with all rights of ingress and egress, uses, revenue, pasturages, trees, woods, and other appurtenances, in consideration of the payment of the sum of one hundred and fifty dollars, which he has received to his entire satisfaction, and that said sum is the maximum worth of said ranches, never having had a higher offer; the relator declares that he renounces all rights and privileges under the

152 estatute; therefore he disposes himself of his vested rights, so that the buyer may take possession, sell, exchange, donate, and use in all manner, at will, as a thing of his own, pledging himself, with his present and future means, at all times, to exert his utmost effort to protect and make good said sale. Mr. Fernando Rodrigues, in turn, manifested that he accepted the same, binding himself with the seller to the fulfillment of all its intents and purposes, now and forever, disclaiming all idea of fraud or deception, renouncing all the exceptions and rights under the estatutes; and, having paid all fees due, it was filed on the book of record before witnesses.

TOMAS ORTIZ.
FERNANDO RODRIGUES.

Witnesses :

E. MORAN.
SANTOZ ORTIZ.

Before me, the notary public, hereby certifies that the foregoing is a true copy of the original on file at this office, and to all intents and purposes I hereby attest the same.

JESUS G. MENENDEZ.

Duly recorded at the registrar of mortgages this day.
Hermosillo, December fifteenth, eighteen hundred and fifty-four.

JESUS G. MENENSES.

Stamps, without those of the paper, \$8.50 (eight dollars and fifty cents).
MENENSES.

Know all men by these presents: That we, Sylvester Mowry, and Joaquin Maria Astiazaran, for himself and also for his mother, Maria del Carmen Tuigo, and Fernando Maria Astiazaran, and Manuel Cubillas for his children, the heirs of Mrs. Carmen Astiazaran, and Juan A. Robinson, and Matias Alsua, and Jose Calvo, and Fernando Rodriguez, and Antonio Rodriguez, and Fernando Cubillas, all being citizens either of what is commonly called Arizona or of Sonora, in the Republic of Mexico, in consideration of twenty-five thousand dollars to us well and truly paid by the Sopori Land and Mining Company, a corporation created by the laws of the State of Rhode Island and Providence Plantations, and located in the city and county of Providence, in said last named State, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, remise, release, convey, transfer, assign, and deliver to the said Sopori Land and Mining Company, their successors and assigns, all the right, title, interest, and claim that we, or either of us, grantors have, or of right ought to have, in and to about four square leagues (be the same more or less) of land, with the mines, buildings, privileges, and appurtenances thereon, being or thereunto in anywise belonging or appertaining, situate in what was formerly a part of the Mexican State of Sonora, but which is now called Arizona, and within the jurisdiction of what was formerly the presidio of Tubac, and being the same lands and estates that were granted and assured to Jose Antonio Orosco, Don Tomas Ortiz, and Don Ignacio Ortiz, or either of them, by the officers of said Mexican Government and of the State of Sonora, duly authorized to make said grant and assurance, and for a more particular description of the premises

154 hereby conveyed, or intended to be, reference is to be had to the documents, deeds, and other evidences of the titles and interest of the said Jose Antonio, Don Tomas, and Don Ignacio thereto placed in the possession of the said Sopori Land and Mining Company by said grantors.

To have and to hold the aforescribed and aforesdemised premises, all and singular, with the mines and buildings thereon standing and being and all other privileges and appurtenances thereto belonging or in anywise appertaining to the said Sopori Land and Mining Company, their successors and assigns, to their sole use, benefit, and behoof forever.

And we, the said grantors, for ourselves and for each of us and for our respective heirs, executors, and administrators, do hereby covenant, agree, and promise to and with the said corporation, their successors and assigns, that we have good right, full power, and lawful authority to bargain, sell, convey, and transfer the premises aforescribed and demised in manner aforesaid; that the same are free from all incumbrances, and that we will warrant and defend the same to the Sopori Land and Mining Company, their successors and assigns, against the lawful claims and demands of all persons whatsoever claiming by, through, or under us, but against none other.

In testimony whereof we, the aforesaid grantors, have hereto set our hands and seals this second (2nd) day of June, in the year of our Lord one thousand eight hundred and sixty (1860).

SYLVESTER MOWRY, [SEAL.]
JOAQUIN MARIA ASTIAZARAN, [SEAL.]
By his Attorney, Sylvester Mowry.

MARIA DEL CARMEN TUIGO, [SEAL.]
By her Attorney, Sylvester Mowry.

FERNANDO MARIA ASTIAZARAN, [SEAL.]
By his Attorney, Sylvester Mowry.

MANUEL CUBILLAS, [SEAL.]
For his Children, the Heirs of Mrs. Carmen Astiazaran,
By his Attorney, Sylvester Mowry.

JUAN A. ROBINSON, [SEAL.]
By his Attorney, Sylvester Mowry.

MATIAS ALSUA, [SEAL.]
By his Attorney, Sylvester Mowry.

JOSE CALVO, [SEAL.]
By his Attorney, Sylvester Mowry.

FERNANDO RODRIGUEZ, [SEAL.]
By his Attorney, Sylvester Mowry.

ANTONIO RODRIGUEZ, [SEAL.]
By his Attorney, Sylvester Mowry.

FERNANDO CUBILLAS, [SEAL.]
By his Attorney, Sylvester Mowry.

Signed, sealed, and delivered in presence of—

N. VAN SLICK.

STEVEN ESSEX.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, ss:

In the city and county of Providence, this fifth day of June, A. D. 1860, personally came the within-named Sylvester Mowry, and came also the within Joaquin Maria Astiazaran, and Maria del Carmen Tuigo, and Fernando Maria Astiazaran, and Manuel Cubillas, and Juan A. Robinson, and Matias Alsua, and Jose Calvo, and Fernando Rodriguez, and Antonio Rodriguez, and Fernando Cubillas, by their joint and several attorney, Sylvester Mowry, and severally acknowledge the within instrument by them signed to be their free act and deed.

Before me,

NICHOLAS VAN SLICK,
Justice of the Peace.

156 UNITED STATES OF AMERICA,
State of Rhode Island and Providence Plantations:

SECRETARY OF STATE'S OFFICE,
Providence, May 25, 1880.

I hereby certify that Nicolas Van Slick, esquire, before whom the annexed acknowledgements was made, and who has thereunto sub-

scribed his name, was at the time of so doing a justice of the peace of the State of Rhode Island, in and for the city of Providence, and as such authorized by law to take depositions and the acknowledgement of deeds and other instruments, and to administer oaths; that he was duly commissioned, as appears of record, . I furthermore believe that his signature is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the State aforesaid the day and year above written.

[SEAL.]

JOSHUA M. ADDEMAN,
Secretary of State.

(Endorsements:) No. 16. Quitclaim deed, Sylvester Mowry & others to the Sopori Land and Mining Company, June 2nd, 1860. Recorded in journal, vol. 3, page 175-179. Filed Sur. Gen'l's Office, Arizona, July 17, 1889, 2.30 p. m. J. R. Farrell, chief clerk.

Copied in duplicate & compared. Recorder's office, Tucson, Pima Co., A. T. Filed and recorded at request of E. M. Shepard, June 28, A. D. 1880, at 2.30 p. m., in book 7, deed real estate, pages 173-177. S. W. Carpenter, county recorder. By W. S. Read, deputy.

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OFFICE OF SURVEYOR-GENERAL,
Tucson, Arizona, March 27th, 1895.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[SEAL.]

LEVI H. MANNING,
U. S. Surveyor-General, District of Arizona.

158 And be it further remembered that thereafter, to wit, on the 20th day of August, 1896, the same being a day of a regular term of the court held at Santa Fe, New Mexico, the following proceedings were had, to wit:

| | | |
|-------------------|---|---------------------------------------|
| MAISH & DRISCOLL, | } | No. 6. San Ignacio de la Canoa grant. |
| vs. | | |
| UNITED STATES. | | |

The above-entitled cause having been argued and submitted at a former day of the court, at Tucson, Arizona, and now coming on for reargument, there appeared Rochester Ford, esq., and George Lines, esq., for the petitioners. After argument by counsel for petitioners, and the United States having filed a brief, the said cause was taken under advisement.

And be it further remembered that thereafter, on August 31st, 1896, the same being a day of the regular term, held at Santa Fe, New Mexico, the court, by Chief Justice Reed, announced its judgment confirming the grant, and the attorneys therein are required to prepare a decree of confirmation in conformity with said judgment and file the same with the clerk of the court.

Said decree was thereafter filed in the office of the clerk and entered of record, and is in the words and figures following, to wit:

159 In the Court of Private Land Claims, sitting in the Territory of Arizona.

FREDERICK MAISH AND THOS. DRISCOLL,
partners as Maish & Driscoll,

vs.

THE UNITED STATES AND THE SOPORI LAND
and Mining Company (impleaded), defend-
ants.

This cause having heretofore come on for hearing upon the pleadings and exhibits on file and upon the proofs taken in open court, as well on behalf of the defendants as on behalf of the petitioners, full legal proof having been taken, C. W. Wringht, esq., and Rochester Ford, esq., appearing for petit'oners Maish & Driscoll; Hon. Matt. G. Reynolds appearing for defendant the United States, and George Lines, esq., appearing for defendant the Sopori Land and Mining Company, said counsel having been heard for said parties and the petition in this cause having been sustained by satisfactory proofs, after due deliberation, the court, being now sufficiently advised in the premises, makes the following findings of fact:

1. That a grant was made on February 2, 1849, by Antonio Teran y Peralta, substitute treasurer-general of the State of Sonora, in the name of the sovereignty of said State, to Tomas and Ygnacio Ortiz, of a tract of land known as the San Ygnacio de la Canoa; that on Sept. 6, 1820, said Tomas and Ygnacio Ortiz presented to the senor governor intendent of the Spanish province of Sonora their petition asking for the survey and other steps necessary for obtaining title and confirmation of the land mentioned in their said petition; that on May 29, 1821, said Governor Intendent Cordero admitted said petition and ordered the
160 commanding officer of the company of Tubac to proceed to the survey of the land which said petitioners registered and to take all steps necessary for the sale of said lands; that on July 7, 1821, the said commanding officer accepted said order of said Cordero, and that on said day said officer communicated said order to said Tomas and Ygnacio Ortiz, and that on said day the said officer, in order to proceed to the measurement of the registered land, appointed the necessary surveying officials; that said officials on said date accepted said appointment and took the oath required by law; that on July 9, 1821, the said officer, accompanied by the interested parties, the appointed officials, and customary witnesses, made an inspection and examination of the registered lands; that at the said place of La Canoa (to which the name of San Ygnacio was given) on the 10th day of the month of July, 1821, and the following day the said commanding officer surveyed the land registered by said petitioners, and that on said 11th day of July, 1821, said petitioners were put in possession of said surveyed lands, and, being satisfied with the said survey, were notified that they should continually mark their boundary

lines with monuments of lime and stone as the law demands; that the said commanding officer, in order to have the land appraised and valued which had been surveyed in favor of Tomas and Ygnacio Ortiz, appointed the proper appraisers, who thereupon appraised said land; that at the military post of Tubac on July 12, 1821, the said commanding officers ordered that said sitios should be put up at auction for thirty consecutive days, which was thereupon done; that thereafter, on Aug. 13, 1821, the testimony of three witnesses was taken, showing the capacity to stock the land which had been registered; that on said day the said commanding officers summoned said interested parties to be present at the auction
 161 and final bidding for of the said lands; that on December 6, 1821, the provisional intendent referred said proceedings to the attorney-general of the treasury for his opinion thereon; that on said day said attorney-general reported that all said proceedings were in accordance with law and advised that the final sale of said lands be made, and that said land was, on the 15th day of Dec., 1821, finally and solemnly sold to said petitioners for the sum of two hundred and fifty dollars, and that on Dec. 17, 1821, the said sum of two hundred and fifty dollars, being the principal amount for which said land was sold, was, by said Tomas and Ygnacio Ortiz, paid into the national treasury of the Mexican Republic and the receipt given therefor, and that the title or grant issued on Feb. 2, 1849, by Antonio Teran y Peralta, as hereinbefore set out, was based upon and was in pursuance and completion of the proceedings and sale of said lands as aforesaid.

2. That the lands so granted and possession of which was so delivered as aforesaid is the tract of land the center point of which is the place then and now known as the San Ygnacio de la Canoa, and being the tract of land embraced within the natural objects and monuments recited and described in the survey of said tract of land as set out in the said grant.

3. That the said tract of land has, from the time of the aforesaid delivery of possession thereof up to the time of the hearing of this cause been possessed by the said grantees and their heirs and legal representatives.

4. That the petitioners and the defendant the Sopori Land and Mining Company are the legal successors in interest to the rights of said original grantees.

The court finds as matter of law that the said delivery of juridical possession and the said sale to said grantees and the said grant to
 162 them based on said sale and the proceedings hereinabove recited vested in said Ygnacio and Tomas Ortiz a title, which was complete and perfect at the date when the United States acquired sovereignty over the territory where such land is situated, and that the petitioners herein and the defendant the Sopori Land and Mining Company are entitled to a confirmation of their claim as prayed in the amended petition of said petitioners Maish & Driscoll, filed in this court on March 1, 1895, to the heirs and legal representatives of the said Tomas and Ygnacio Ortiz, and this finding and the confirmation in this decree contained are based upon the provisions of the ordinances of intendentes of Dec. 4th, 1786; of the decree of Oct. 5, 1821, of the constituent congress of Mexico; of the order of Oct. 24, 1821, of the constituent congress of Mexico; of the general sovereign decree of the Mexican

Nation of August 4, 1824; of the law number thirty, of May 20, 1825, of the State of Sonora; of the law number twenty-six, of July 11, 1834, of the State of Sonora; of the general law of classification of the Mexican Republic of Sept. 17, 1846; of the provisions of the plan of Iguala and of the treaty of Cordova, and of the other laws of Spain and Mexico applicable thereto.

The court hereby specifies that the said land hereby confirmed is located within the county of Pima, in the Territory of Arizona; that the boundaries thereof are the boundaries and natural landmarks described and recited in the title paper of said grant; but it particularly specifies that the area of said land hereby confirmed is forty-six thousand six hundred and ninety-six and two-tenths acres, according to the map of the survey of said grant made by Y. Bonillas, esq., November, 1893, and that the said area and the aforesaid boundaries and natural landmarks are the ones described in said map, which map is marked "Map San

Ygnacio de la Canoa Private Land Claim, situated in Pima
163 County, Arizona, surveyed by Y. Bonillas, Nov., 1893," and being the map offered in evidence by petitioners herein on the trial of this case on April 2 and 3, 1895, and marked "Exhibit B," and that the aforesaid map made by said Bonillas correctly represents the location, area, natural landmarks, and boundaries of said land granted and hereby confirmed, according to the survey and description contained in the title papers of said grant.

It is therefore ordered, adjudged, and decreed by the court that the claim of the petitioners and of the defendant the Sopori Land and Mining Company for the tract of land embraced within the said grant, as designated by the aforesaid map of said Y. Bonillas, be, and the same hereby is, confirmed to the heirs and legal representatives of said Tomas and Ygnacio Ortiz; but the confirmation or allowance of this grant shall not confer any right or title to any gold, silver, or quicksilver mines, or minerals of the same, nor any lands that may have been patented or disposed of by the United States.

By the court.

JOSEPH R. REED,
Chief Justice.

(Endorsed:) In the Court of Private Land Claims. Frederick Maish and Thomas Driscoll vs. The United States and the Sopori Land and Mining Company (impleaded), defendants. Degree of confirmation. Filed and recorded in the office of the clerk, Court of Private Sept. 2, 1896. Jas. H. Reeder, clerk. By R. L. Long, deputy.

164

Dissenting opinion by Mr. Justice Murray.

In the U. S. Court of Private Land Claims.

| | | |
|---------------------------------------|---|--------------------------|
| MAISH AND DRISCOLL, PETITIONERS, | } | No. 6. Arizona district. |
| <i>versus</i> | | |
| THE UNITED STATES ET AL., DEFENDANTS. | | |

(Involving the title to the property included within what is claimed as the "San Ygnacio de la Canoa grant," in the Territory of Arizona.)
Delivered and filed in my office this 30th day of August, 1896.

JAMES H. REEDER, *Clerk.*
By R. L. LONG, *Dep.*

165 In the Court of Private Land Claims, District of Arizona.

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|---------------------|--|
| MAISH & DRISCOLL, | } No. 6. San Ygnacio de la Canoa grant, in the Territory of Arizona. |
| vs. | |
| THE UNITED STATES.) | |

It appears from the papers constituting the expediente, that on the 6th day of September, 1820, Tomas Ortiz and Ygnacio Ortiz, residents of the military post of Tubac, petitioned the then governor intendente of the province of Sonora and Sinaloa for four sitios of land, which they proposed to stock with cattle and horses. Their petition was received at Arispe, capital of the said province, on the 29th of May, 1821. The commanding officer of the company of Tubac was directed by the intendente to take the necessary steps to have the land asked for surveyed and appraised. Without giving each step in detail taken by the officers leading up to a final sale, it is sufficient to say that all the proceedings seem to be in strict conformity with the general practice in such cases at that time.

On the 17th of December, 1821, the final sale was made to the petitioners and the purchase money paid.

On the 30th day of January, 1849, the expediente was presented to the treasury general of the State of Sonora, and the grant was made by him, on the second day of February, 1849.

Counsel for petitioners insist that the claim in this case should be confirmed, if not as a complete and perfect grant, as an imperfect or equitable one.

166 1st. Because all grants instituted prior to the independence of Mexico were carried out and final title issued thereon; and that the proceedings after independence were carried on by the intendents up to the creation of the office of commissary-general until May, 1825, when the law of the State of Sonora for the sale of its lands was passed; that they were then carried on by the State officials till the State was abolished and departments created by the law of October 3rd, 1835; that sales were then carried on by the department officials under the central system until it was abolished by the law of August 22nd, 1846, and that sales were carried on after that time by the States until they were again abolished in 1853.

2nd. Because all grants instituted after independence before intendents, subdelegates, and others, were carried on and final title issued thereon in the same way and by the same officials during the respective periods when they were in office, to wit, first by the commissary-general, afterwards by the State officials, afterwards by the Departments, and afterwards by the State officials again.

3rd. Because the treasurer-general of the State of Sonora, after the passage of the law of May 20th, 1825, made grants and issued final titles until the State was abolished.

4th. Because grants instituted under the States and which had not been completed when the States were abolished were carried on and final title issued thereon by the department officials.

5th. Because in the same manner grants which were instituted under the departments and which had not been completed when the central

system was abolished were carried on and final title thereon issued by the State officials.

6th. Because after independence the intendants were the granting officers up to the creation of the office of commissary-general; that
 167 the commissary-general then exercised up to, and, in a few cases
 for a short time after, the passage of the law of Sonora of May
 20th, 1825, of the same powers in every respect which had been exercised by the intendants.

It is further insisted that if the treasurer-general of the State of Sonora had no power to make the grant, that the survey and appraisement of the land in 1820 and the final sale by the intendent in December, 1821, and payment of the purchase money, constituted an equitable claim that should be confirmed under the provisions of section 6 of the act of March 3rd, 1891.

Counsel further insists that having shown the recognition by officials of the Empire, and the Republic, of Mexico of expedientes and grants similar to the one in this case, that this claim falls within the decision of this court in the case of Tomas Torres et al. vs. The United States, and should be confirmed.

It is further insisted that it being the duty of the governor of Sonora to report to the Mexican Congress all decrees and orders of the congress of the State, that the court should presume that the law of May 20, 1825, was brought to the knowledge of the Government and ratified by it.

A summary or classification of expedientes existing at Hermosillo, State of Sonora, from an official catalogue of expedientes issued by the State, is filed as evidence, which catalogue seems to sustain the contention of counsel to the extent of showing that grants had been issued on the expedientes set out in said catalogue at the time and by the officials therein mentioned.

I will examine briefly the several positions assumed by counsel.

In the case of Tomas Torres et als. vs. The United States a petition was filed asking for a confirmation of what is known as the "Rancho
 168 del Rio Grande Grant," made by the governor of the province
 of New Mexico to a number of persons in the year 1795. It appeared from archive evidence that early in February, 1837, sundry citizens petitioned the governor of New Mexico for a grant to the lands which had been granted in 1795. The governor referred the petition of 1837 to the town council of Toas, with instruction to investigate the matter and to report whether or not the land should be granted. The town council, after investigating as required by the governor, reported to him that the land ought not to be granted, for the reason that it had been granted to a number of citizens in 1795, and that the grantees and their heirs had been in possession from the date of the grant. The governor refused to grant the land for the reason stated in the report of the town council. It was made the duty of the governors of the Territories, by the provisions of the regulations of November 21, 1828, to take the necessary steps to determine whether or not the land petitioned for should be granted. The court held in the case referred to that the decision of the governor, based on the facts presented to him, was binding on the Mexican Government and equally binding on the United States.

There is no such question presented in this case. It has not been decided by any official of the Mexican Government authorized to bind it, that the expediente in this case confers any rights on the grantees, either legal or equitable. The sale was made by an intendent and the purchase money paid after the independence of Mexico. This court held in the case of the United States vs. Santiago Ainsa, administrator, et als., that the intendents, after the independence of Mexico, had no power to sell or convey public land belonging to the Empire, and that sales made by them, or purchase money paid for land so sold, was not binding on the Mexican Government. I am satisfied that the intendent, 169 after the independence of Mexico, had no power to sell lands, for the reasons stated in the opinion of the court in that case, and for the additional reason that the resolution of the council of "the Indies" of December 23rd, 1818, which was signed by the King, declared that all business pertaining to the alienation of the lands in New Spain should belong to the department of the treasury of the Indies at Madrid. (Hall's Mexican Law, p. 76.) That resolution repealed all prior laws which conferred power or authority on the intendents to make grants to public lands in New Spain. It is a rule of civil law that a posterior repeals all prior laws in conflict with it. (Schmidt, Civil Law of Spain and Mexico, p. 100; Elements of the Spanish Law, by Eschrsche, translated by Bethel Lockwood in 1886, pp. 10, 11.)

By the royal ordinance of December 4th, 1786, dividing the Empire into twelve intendentes, the intendents were the principal officers in the provinces. Article 7 provides "that the intendents should have charge of the four branches, or subjects, of justice, police, treasury, and war, giving them for that purpose all necessary jurisdiction and powers. In matters relating to the treasury and war they were superior to the viceroy and commandant-general. They were subordinant to the viceroy in matters relating to the justice and police in ten provinces and to commandant-general in the other two." Art. 81 gave them power to sell and make grants of royal lands subject to the approval of the superior junta de hacienda. (Vide, 2 White Recop., p. 69.)

It will be observed that the resolution of the council of the Indies before referred to did not in any way affect the powers conferred on the intendents by article 7 of said ordinance of 1786, but only repealed 170 article 81, which is in conflict with its provisions.

The intendents having no power or authority to sell or make grants of royal lands for some time prior to the independence of Mexico, it is clear that the decree of October 5th, 1821, which habilitated and confirmed all authorities as they were for the purpose of legalizing the exercise of their respective function, and the order of October 24, 1821, providing that in matters relating to the treasury "the directors-general of the revenue, the officers of the treasury, and intendents, in cases and matters that severally belonged to them, in conformity with their ordinances without any variation in them; consulting the regency or the Sovereign Council (Junta) in those things or matters within their attributes, the determination of which may not be within the powers of said officers or offices," have no reference to the sale or disposition of the public lands belonging to the Empire of Mexico. (Flipper, pp. 39-39a.)

The evidence shows that sales of land made by intendents before and after independence were recognized by the Mexican Government and

final title issued to purchasers. The Republic of Mexico had an undoubted right to deal with its citizens in these matters as it saw fit, and to issue final title to purchaser without reference to the authority of the officers initiating the proceedings or making the sales; and if this court had the power conferred on the commission, and district and Supreme Courts of the United States by the act of March 3rd, 1851, there would be much force in the contention of counsel, that equities recognized by the usages and customs of Mexico should govern this court in similar cases presented to it for confirmation. But such is not the case. Section 11 of the act of 1851 is as follows: "That the commission herein provided for and the district and Supreme Courts, in
171 deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the Treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable." (9 Stats. at. L., p. 633.)

Subdivision 1 of section 13 of the act creating this court is as follows:

"First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law, or by the provisions of the Treaty of Cession to respect and permit to become complete and perfect if the same was not at said date already complete and perfect."

The words "usages and customs" and "the principles of equity" in the act of 1851 are not in the act of March 3rd, 1891, and it is fair to presume that they were left out intentionally by Congress. It is certainly clear that this court cannot look to the "usages and customs" of the government from which any claim is derived without disregarding the plain provisions of the statute. This court is not authorized to presume that the State of Sonora had power to make grants of land, or that the law of May 20, 1825, had been ratified by the government. No claim can be allowed unless it shall appear to be upon a title not only lawfully but regularly made by the Government of Spain or Mexico, or from the States of Mexico having lawful authority to make grants of land. It must appear that the claimant could have gone into the courts of the former governments and asked as a matter of right (not mere grace or favor) that his claim be made perfect, if the United
172 States had not acquired the territory.

The decisions of the Supreme Court of the United States relied on by counsel were made under the act of March 3rd, 1851, and have no application. In the case of the United States vs. Peralta, 19 Howard, p. 343, the learned judge who delivered the opinion of the court used the following language:

"The order of Michaletorena, in 1844, for the granting of a new title to Peralta, is itself evidence of the usage and custom, and that the acts of Sola and Arguello were considered valid, and that the title, whether legal

or equitable, conferred on them should be respected and confirmed by the Government." The decision in the case of *Arguello v. U. S.*, 18 How., p. 540, is approved.

And, again, in the case of the *United States vs. Auguisola*, 1 Wallace, p. 352, Mr. Justice Field said: "They have directed their tribunals, in passing upon the rights upon the inhabitants, to be governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of the former government, the principles of equity, and the decision of the Supreme Court, so far as they are applicable."

It is clear that these decisions of the Supreme Court are based on the words "usages, customs, and principles of equity" in the act of 1851.

The contention of counsel that the court should presume that the law of Sonora passed May 20th, 1825, had been ratified by the Government of Mexico is not sustained by the case of *Clinton vs. Englebrecht*, 13 Wallace, p. 434. There was no such question before the court in that case. It is true the learned judge who delivered the opinion said "it

would not be unreasonable to presume that the jury laws of the 173 Territory of Utah had been ratified by Congress," but expressly stated that the question was not in the case. It was the duty of the governors of the several departments of Mexico during the existence of the central system to report to Congress all the orders and decrees made by the departmental assemblies. Yet the Supreme Court of the United States, in the case of *Vigil*, 13 Wallace, page 450, held that a grant made by the departmental assembly of New Mexico in 1844 was void for want of power in that body to make it. The court in that case followed the well-settled rule that a grant made by one without lawful authority to make it, it is void in all governments. (*Polk's Lessee v. Wendell*, 9 Cranch, 745; *U. S. v. Carey Jones, Id.*, 766.)

It is claimed that the law of August 4, 1824, for the classification of the revenues of the Government and the States, gave to the States all the public land for the purpose of enabling them to raise revenue from that source, and that the law passed by the Congress of Sonora on May 20, 1825, authorizing the treasurer-general to sell lands, was carrying out the authority conferred on the States by said law. Whatever may have been the effect of the law of August 4, 1824, as to the public land in the States, I do not see how it could affect lands which had been sold and paid for prior to the creation of the States. In such cases, where final title had not been issued, the legal title was certainly in the General Government as trustee for the equitable owner, and would not have passed to the States under the provisions of a revenue law. The court will not presume that under the provisions of such a law the Republic of Mexico intended to transfer to the States the equities of its citizens to land acquired under a former government. It will, however, be seen from an examination of the law of May 20, 1825, that it did not confer the power

on the treasurer-general to make grants to land that had been 174 registered and surveyed, but final title had not been issued.

Articles 19 and 23 of the law of May 20, 1825, are as follows:

"The treasurer as the immediate chief of the revenue shall make the sales and give the titles. The treasurer shall endeavor, by all means in his power, to satisfy himself of the truth before making the grant which

the preceding articles provide for, and the party in interest shall take no part in the steps he may take to secure that end." (Flipper, p. 62.)

It will be seen that the preceding articles contain no reference to land not subject to sale by the treasurer-general.

Articles 27 and 28 are as follows:

"Art. 27. Those who possess sitios and who, although they have them registered and surveyed, have not obtained the title, shall present themselves to the treasury-general and shall state in writing the causes of their failure, the deputy or judge who made the survey for them and the payments they made.

"Art. 28. The treasurer shall fix for this purpose the time that seems to him proper, and as soon as he gets all the information together, shall render a report to the Government, which shall order the proper steps taken, with regard to the rights of the parties in interest and those of the treasury." (Flipper, p. 65.)

It was the plain duty of the treasurer-general in cases falling within the provisions of articles 27 and 28 to report all the facts to the Government; so that the Government (not the treasury-general) may take the proper steps with regard to the rights of the parties in interest and the treasury.

But it is useless to pursue this question further. The law of August 4, 1824, was not in force at the date of this grant. Whatever power or authority the State of Sonora had (if any) to dispose of the public land by virtue of that law, had been repealed by the decree of September 17, 1846, which again classified the revenues of the General Government and the States.

The States were rehabilitated by decree of August 22, 1846. (Compiled Laws, Vol. V, p. 135, No. 2893, Flipper, p. 142.)

In the classification of revenue belonging to the Federation, the public lands were reserved to it. Article 3 of said decree is as follows: "The proceeds from the sale of free lands which the law assigns to the Federation." There is no provision in this law classifying the revenues of the States, which authorized the treasurer-general of the State of Sonora to make a grant of lands.

By a decree of November 27, 1846, a bureau of colonization was established in conformity with the provisions of articles of the law of June 1, 1839, which law was passed to carry out the colonization law of April 4, 1837. On the 4th of December, 1846, a general colonization law was decreed, which provided for the sale of all the public lands under the direction of the bureau created November 27, 1846. (See Code of Colonization of Public Lands Mexico, Government Printing Office, 1893, No. 120, p. 347, Flipper, p. 149.)

On December 4, 1846, regulations were issued to all the governors of the States, recommending exact compliance with the decree issued for the establishment of the bureau of colonization. (10 Code, p. 360, Flipper, p. 165.)

In the regulations referred to the reasons for reducing the price of public lands below 10 reales per acre (price fixed by the colonization law of April 4 of 1837) is given, and among other things in relation to public land is the following:

"The Government has believed it ought to leave to Congress to decree certain transcendental points, such as those relating to the internal gov-

ernment of the colonies, the formation of the States composed
 176 thereof, and the religion of those where the inhabitants are not
 Catholics, and also reserved to Congress the decision of cardinal
 points as to whether the matter of colonization should remain reserved to
 the federal power as absolutely necessary, that it be carried out under
 uniform rules, and that it have the most complete effect, applying, never-
 theless, to the States a part of the proceeds from the public land sold,
 and another to the redemption of the public debt. * * *

It will be noticed that the federation is asserting its rights to control
 the sale of the public lands in the State for the purpose of colonization to
 the same extent that it asserted its right to compel the States to colonize
 by donation under the provisions of the law of August 18th, 1824. The
 decree of September 17, 1846, reenacted article 3 of the law of September
 21, 1824, which made it the duty of the commissary-general to collect in
 the States the revenue belonging to the Republic.

Article 20 of said decree is as follows:

"These shall be continued in the States and Territories for the present,
 the payments that are being made by order of the General Government in
 the offices of the revenues assigned by the present decree to said States,
 and said payments being charged to the contingent account, and for what
 they are found to owe the federation by burdens they were heretofore
 carrying."

It will be observed that the provisions of this decree the revenue
 officers of the General Government were not only to collect the revenue
 belonging to it in the States, but also the revenue which had been assigned
 to the States under the classification of revenue that had formerly been
 imposed by the General Government during the existence of the central
 system. If the survey, sale, and payment of the purchase money in 1820
 and 1821 constituted an equity against the Republic of Mexico, the court
 must presume under the facts in this case that it has been abandoned.
 The application in 1849 was not made to an officer who had any power or
 authority under the law to make the grant, and the case stands on no higher
 ground than it would if presented to the court as an equitable claim
 177 based on the sale and purchase and payment of the purchase money,
 so the case falls within the rule laid down by the Supreme Court of the
 United States in the case of United States versus Boisdore, 11 Howard,
 page 63. There is no evidence tending to show possession prior to 1843,
 and no reason given for such delay. The evidence of possession at any
 time is meagre and unsatisfactory. There is no evidence of title in peti-
 tioners derived from one of the grantees, Ignatio Ortiz. The conveyances
 purporting to be executed by his heirs is not sufficient. The recitals to
 that effect in the deed furnish no evidence of the fact of heirship. (See
 United States versus Hughes, 13 Howard, page 6.) The grant is not
 located as required by article six of the treaty of 1853, which is as fol-
 lows:

"No grants of land within the territory ceded by the first article of this
 treaty bearing date subsequent to the day—twenty-fifth of September—
 when the minister and subscriber to this treaty on the part of the United
 States proposed to the Government of Mexico to terminate the question
 of boundary, will be considered valid or recognized by the United States,

or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico."

(See Treaties and Conventions between the U. S. and other powers, 1776, 1887.)

This is clearly a grant by quantity and not by metes and bounds. There was four sitios petitioned for and only four sitios sold, while the boundaries called for in the grant include more than ten sitios. Four sitios can not be located by a surveyor from the natural objects called for in the grant. A grant is not located within the meaning of the treaty where the lands so granted can not be found and identified by the boundaries called for in the grant. If land sold and paid for in 1821 and 1822, but no final title has been issued, was public land, the grant is declared void by decree of November 25th, 1853, article two of which is as follows:

178 "Consequently it is declared that all sales, concessions, or any other class of alienations of public lands that have been made without the express order and approval of the general power in the manner prescribed by law, are null and of no value or effect." (Comp. Laws, Vol. VI, p. 776, No. 4118.)

It follows that in my opinion the claim should be rejected and the petition dismissed.

WM. W. MURRAY.

(Endorsed:) Canoa, dissenting opinion of Justice Murray, filed August 30, '96. James H. Reeder, clerk. By R. L. Long, dep.

179 And be it further remembered that thereafter an appeal and allowance thereof, together with a citation, were filed in the office of the clerk, which said appeal and allowance and citation are as follows, to wit:

Appeal and allowance.

Court of Private Land Claims.

UNITED STATES OF AMERICA, ss:

FREDERICK MAISH AND THOMAS DRISCOLL, PART-
ners as Maish & Driscoll, plaintiff and appellee,

vs.

THE UNITED STATES, DEFENDANT AND APPELLANT.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the 31st of August, 1896, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

The said defendant shows to the court here that the statement by the United States attorney to the Attorney-General required by sec. 9 of the

act of Congress establishing this court, approved March 3, 1891, was not made in said cause within sixty days after the rendition of judgment therein, but was made on , 189 .

MATT G. REYNOLDS,
U. S. Attorney for Defendant and Appellant.

And now, to wit, on December 1st, 1896, it appearing to the satisfaction of the court that the statement required to be made by the U. S. attorney to the Attorney-General by sec. 9 of the act of Congress establishing this court, was not made within sixty days after the rendition of the judgment therein, but was made on, to wit, the day of , 189 :

It is ordered that an appeal be and hereby is now allowed as prayed for.

JOSEPH R. REED,
Chief Justice.

Filed in the office of the clerk, Court of Private Land Claims.
December 3rd, 1886. Jas. H. Reeder, clerk. By R. L. Long, deputy.

180

Citation on appeal to Supreme Court.

UNITED STATES OF AMERICA, ss:

The President of the United States to Frederick Maish and Thomas Driscoll, partners as Maish & Driscoll, or Rochester Ford, their attorney of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, to wit: Sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellee, to show cause, if any there be, why decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of December, in the year of our Lord one thousand eight hundred and ninety-six.

JOSEPH R. REED,
Chief Justice, Court of Private Land Claims.

On this day of , 189 , personally appeared before the subscriber, and makes oath that he delivered a true copy of the above citation to .

Subscribed and sworn to before me this day of , 189 .

I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees, this 3rd day of December, 1896.

ROCHESTER FORD,
Attorney for Appellee.

Filed in the office of the clerk, Court of Private Land Claims, December 4th, 1896, Jas. H. Reeder, clerk, by R. L. Long, deputy.

UNITED STATES OF AMERICA,

Territory of Arizona, ss:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing is a full, true, and correct transcript of the record, proceedings had, evidence introduced, and judgment entered in the case, entitled Maish & Driscoll vs. United States, No. 6, San Ignacio de la Canoa grant, as the same appears in the records of my office.

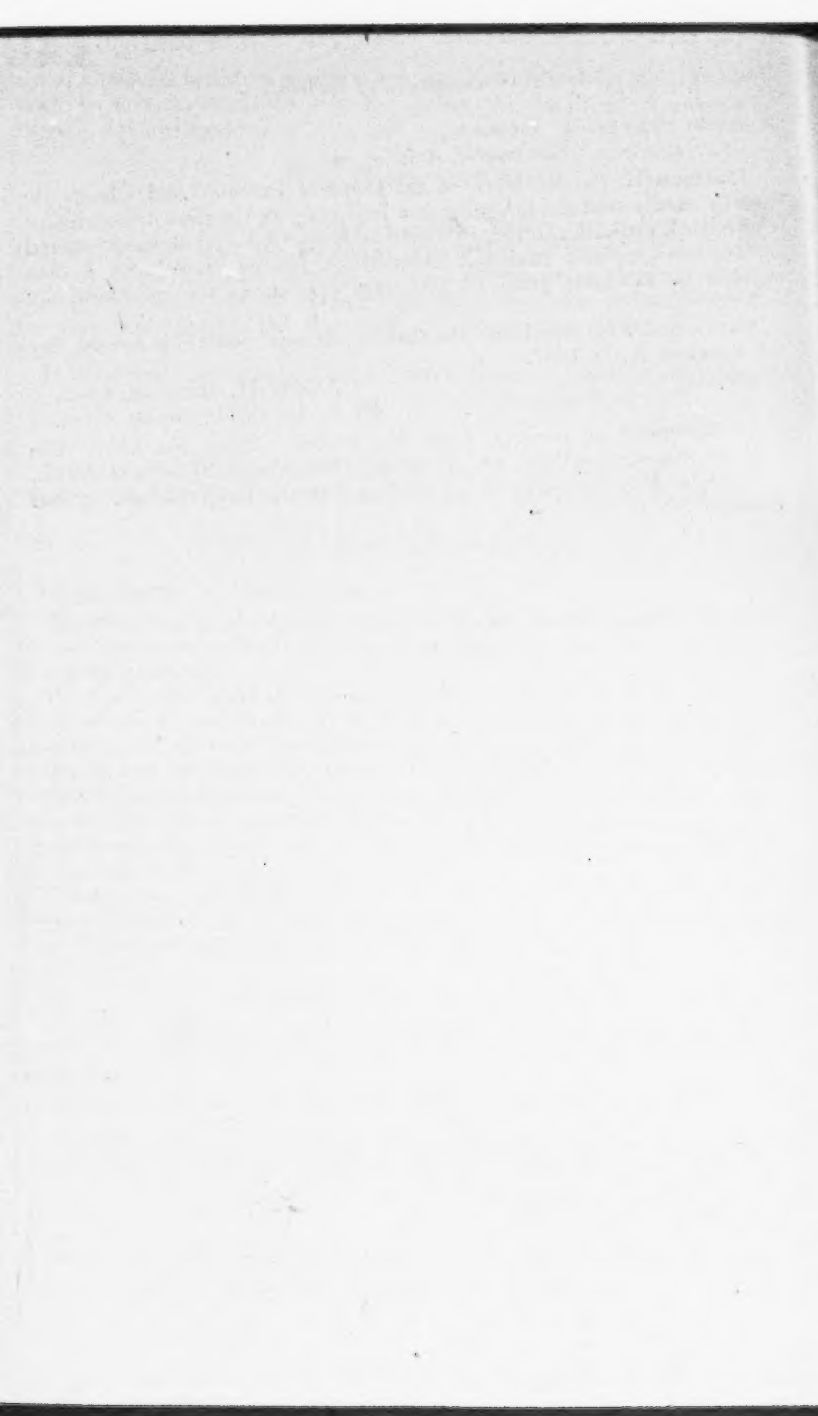
Given under my hand and the seal of the said court this second day of January, A. D. 1897.

[SEAL.]

JAMES H. REEDER, *Clerk,*By R. L. LONG, *Deputy Clerk.*

(Indorsement on cover:) Case No. 16,481. Term No. 297. The United States, appellant, vs. Frederick Maish and Thomas Driscoll, partners as Maish & Driscoll. Court of Private Land Claims. Filed January 30, 1897.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 297.

THE UNITED STATES, APPELLANT, vs. FREDERICK
MAISH AND THOMAS DRISCOLL, PARTNERS AS MAISH
AND DRISCOLL.

1

STIPULATION.

It is hereby stipulated that the following affidavits of Encarnation Ortiz and Nasario Ortiz may be printed and taken as part of the record in this case, and that said affidavits may be received on the argument of this case in the Supreme Court of the United States with as full force and effect as if said affiants and each of them had personally testified under oath to said statements on the trial of said case, said affidavits being received according to the terms of this stipulation instead of the oral testimony of each of said affiants.

MATT. G. REYNOLDS,
Special Asst. to the Attorney-General for United States.

ROCHESTER FORD,
Of Counsel for Appellees.

2

In the Supreme Court of the United States.

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| THE UNITED STATES, APPELLANT, <i>vs.</i> FREDERICK MAISH AND THOMAS DRISCOLL, partners as Maish & Driscoll. | } | Appeal from the Court of Private Land Claims. |
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TERRITORY OF ARIZONA,
County of Pima, ss:

Incarnacion Ortiz, being duly sworn according to law, makes oath and says that she was born in Altar, Sonora, Mexico, and that she is about sixty-nine years of age; that she knew Tomas and Ignacio Ortiz in their lifetime; that they were uncles of her father; that she has very many times been in the house of Ignacio Ortiz, and knew him and his family intimately; that he lived at Tubac, Arizona Territory, and is now dead, having died prior to August, 1883; that the name of the wife of said

Ignacio Ortiz was Francisca, and that by her he had three children, two daughters, Anna Maria and Anna Joaquina, and one boy, Ignacio; that Anna Joaquina married Joseph M. Yancy, and is now living in the State of California; that Anna Maria died in 1895; that Ignacio was never married and that he is now residing in the Territory of Arizona; that said Ignacio Ortiz had a son, Narsizo Martinez, and a daughter, Mariana Ortiz de Martinez, by another woman than said Francisca, and that the above-named three daughters and two sons were all the children that said Ignacio Ortiz had; and further deponent sayeth not.

ENCARNACION ORTIZ.

Subscribed and sworn to before me this 26th day of January, 1897.

[SEAL.]

WILLIAM J. ROSS,
Notary Public.

TERRITORY OF ARIZONA,
County of Pima, ss:

Nasario Ortiz, being duly sworn according to law, makes oath and says that he was born in Tubac, Arizona, and that he is over eighty years of age; that he was raised in Altar, Sonora, Mexico, where he lived till about the year 1832, when he removed to the State of California, where he lived for about ten years, when he returned to the Territory of Arizona, where he has resided ever since; that he very well knew Tomas and Ignacio Ortiz; that they were his cousins; that Ignacio Ortiz had a son, Ignacio, who is still alive, and had a daughter, Anna Joaquina, who married Joseph M. Yancey, and a daughter, Anna Maria; that said Ignacio Ortiz, the father, was killed by the Papago Indians prior to August, 1883; that this deponent has many times been in the house of said Ignacio Ortiz, and knew his family; that in addition to the children above named he had a son, Narsizo Martinez, and a daughter, Mariana Ortiz de Martinez, who were children of a wife to whom he was not married by the Catholic Church, and that these were all the children of said Ignacio Ortiz; and further deponent sayeth not.

NASARIO (his x mark) ORTIZ.

Witness to signature:

A. L. COX.

Subscribed and sworn to before me this 26th day of January, 1897.

[SEAL.]

WILLIAM J. ROSS,
Notary Public.

3 (Indorsed on cover:) Case No. 16481. Supreme Court U. S. October term, 1897. Term No., 297. The United States, appt., vs. Frederick Maish and Thomas Driscoll. Stipulation for addition to record of affidavits of Encarnacion and Nasario Ortiz. Office Supreme Court U. S. Filed Sep. 23, 1897. James H. McKenney, clerk.

DEC. 31. 1897.
JAMES H. MCKENNEY,
CLERK.

No. 297.

By. of Atty. Gen. (Richardson Prentiss)
for Appellant.

Filed Dec. 31. 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

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| THE UNITED STATES, APPELLANT, v. FREDERICK MAISH AND THOMAS DRIS- coll, partners as Maish and Driscoll. | } No. 297. |
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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

ABSTRACT, STATEMENT, AND BRIEF ON BEHALF OF THE UNITED STATES.

CANOA GRANT IN ARIZONA.



In the Supreme Court of the United States.

OCTOBER TERM, 1897.

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| THE UNITED STATES, APPELLANT, | } No. 297. |
| v. | |
| FREDERICK MAISH AND THOMAS DRIS- coll, partners as Maish and Driscoll. | |

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

ABSTRACT, STATEMENT, AND BRIEF ON BEHALF OF THE UNITED STATES.

ABSTRACT AND STATEMENT.

Suit was instituted by MAISH AND DRISCOLL, a firm composed of Frederick Maish and Thomas Driscoll, on the 1st day of March, 1893, for the confirmation of two grants situated in Arizona, one known as the SAN YGNACIO DE LA CANOA grant and the other as the MARIA SANTISIMA DEL CARMEN, or BUENA VISTA grant.

Upon suggestion of counsel for the government that there was a misjoinder of causes of action, by reason of two independent grants being included in one petition, plaintiffs filed an amended petition for the confirmation of the SAN YGNACIO DE LA CANOA grant. (R., 7-11.)

Under the amended petition, plaintiffs, as copartners, claimed to be the owners in fee of the Canoa grant, claiming the same by grant title bearing date the 2d of February, 1849, duly made and executed by Antonio Teran y Paralta, treasurer-general of the free and sovereign state of Sonora, in the republic of Mexico, in the name of the sovereignty of said state, under and by virtue of article 11 of the general sovereign decree No. 70, passed on the 4th day of August, 1824, by the congress of Mexico, alleging that said article concedes to the states of the republic of Mexico the rents or revenues which by said law are not reserved to the general government, one of which revenues is the vacant lands within the respective states; and that by virtue of law No. 30, of May 20, 1825, and other decrees relative thereto, to wit, sections 3, 4, 5, 6, and 7, of chapter 9 of the organic law of the treasury, No. 26, of July 26, 1834, the disposition of such lands was vested in the states of Sonora and Sinaloa. That under and by virtue of such laws and decrees such proceedings were had as that the said treasurer-general of the state of Sonora, in the name of the state, duly and regularly, and for a good and valuable consideration, to wit, the sum of two hundred and fifty dollars, and for other good and valuable considerations in said grant title set forth, did, on the

2d day of February, 1849, sell and convey in fee to Tomas and Ygnacio Ortiz the land known as the San Ygnacio de la Canoa grant.

It is further alleged that the proceedings resulting in the issuance of said title were instituted by a petition dated September 6, 1820, addressed to the governor intendant, who was then the officer of the Spanish government having charge of and exclusive jurisdiction in the matter of sales of public lands in the jurisdiction of Tubac, in which jurisdiction the lands thus petitioned for were situated; that proceedings of survey, valuation, and publication were taken on said petition, as required by the instructions and laws of the royal ordinance of intendants of December 4, 1786, and that on December 15, 1821, the tract petitioned for and as surveyed according to the calls of the *expediente* thereof was sold by the officers of the Mexican republic to Tomas and Ygnacio Ortiz for the sum of two hundred and fifty dollars, which amount was thereupon paid by said grantees into the national treasury of the Mexican republic; that the said sale was on December 17, 1821, approved by the *provincial junta de hacienda*, or provisional assembly of the national public lands, and on the same day referred to the superior board of the treasury for its approval; that before it could be approved, the said superior board of the treasury was abolished, and no further proceedings were taken thereon until January 30, 1849, when the said grantees applied to the treasurer-general of the state of Sonora for the issuance to them of the formal title to the said lands for which they had made

payment as aforesaid, whereupon there was issued to them on the 2d day of February, 1849, the final *testimonio* or evidence of title, and the same was fully recorded on page 75 of the book of *toma de razon* for the said year 1849. To the petition was attached a sketch-map showing the location and boundaries of the grant as claimed by the claimants.

The further allegations of the petition relate to the presentation of the title to the surveyor-general of the territory of Arizona under the law of 1854. The surveyor-general reported the matter favorably to congress, but no further action was taken. (R., 7-11.)

The allegations of the petition were placed in issue by the United States.

The claim is based upon a *testimonio* or *titulo*, offered in evidence by the plaintiffs and marked "Exhibit A" (R., 30-52), and it will be noticed that the officers participating in making up the *expediente* in this grant are the same as those in the Sonoita grant, and that the two grantees, Tomas and Ygnacio Ortiz, also participate in making up the Sonoita *expediente*.

The preamble to this *testimonio* (R., 30) recites as authority national decree No. 70, of August 4, 1824, the law of the state of Sonora and Sinaloa, No. 30, of May 20, 1825, and sections 3, 4, 5, 6, and 7 of chapter 9, of law No. 26, of July 11, 1834, and the national law of September 17, 1846.

The petition dated September 6, 1820, asked for FOUR *sitios* of land at the place called La Canoa, for the purposes of agriculture and the raising of stock. This petition was not acted upon until May 29, 1821, when the

formal order for survey, appraisement and valuation, an thirty days' notice was made.

The survey was commenced on July 10, 1821 (R., 33), and after providing the measuring cord of fifty *varas* and taking as a center the place pointed out by the petitioners, and called San Ygnacio de la Canoa, they measured in a northerly direction along the public road leading to the *presidio* of Tubac three hundred and seventy-eight *cordeles*, when they reached a place called Saguarito, where there stands a plant of that name, which was to remain as a boundary until a suitable monument could be erected, it being about five leagues distant from the mission of San Xavier del Bac. From this place they measured in a westerly direction fifty *cordeles*, which brought them to a hill with many black rocks, standing alone, whose brow was covered with giant cactus and *palo verde* trees, and on top of said hill a pile of stones was ordered placed as a monument. Returning to the boundary mark of Saguarito, they measured in an easterly direction fifty *cordeles*, which brought them on the same low ground to a spot fronting the point of the mountain called Sierrita del Puerto de los Muchachos, where a cross was erected as a sign for a monument. Returning to the center, they measured in a westerly direction fifty *cordeles* along a *cañada* facing the Sierrita de la Tinaja, which brought them to a little knoll on the right side of said *cañada*, upon which was placed a pile of stones as a monument. Returning to the center, they measured in an easterly direction fifty *cordeles*, at the end of which they arrived at a vast low table-land, very even and flat, in front of which the Santa Rita mountains begin

to slope, there being at the right a *cañon* which extends toward said mountains, where another pile of stones was ordered placed as a monument.

On the following day the survey was continued. (R., 34.) Commencing at the center, they measured twenty-two *cordeles* in a southerly course along the public road, which brought them against the boundary line of the measurements established by the military post and company of Pimas at Tubac, where it was ordered that a cross should be painted as a sign for a monument, which was done upon a *mezquite* tree. From this point fifty *cordeles* was measured in a westerly direction, which brought them to some low hills, where a pile of stones was placed as a monument. Returning to the *mezquite* tree on which the cross was painted, they measured in an easterly direction, which brought them to a low, stony table-land, facing the Santa Rita mountains, by the *cañon* known as the Madera (the lumber *cañon*) upon the same line of boundary measurements established for the said post of Tubac. The measurements having been concluded, the result was four *sitios* for the raising of cattle and horses, as registered by Tomas and Ygnacio Ortiz, of the *presidio* of Tubac.

The land was appraised at thirty dollars per *sitio* (R., 35), and it will be noticed that this appraisement was not signed by the marker, José Antonio Figueroa, and the measurers, Juan José Orosco and Manuel Castro, who were appointed (R., 32) to fill these positions.

The order for the thirty days' publication was made on July 12, 1821. (R., 35-36.)

The first publication was on July 14, 1821 (R., 36), in which it was stated that the amount of land which was to be sold was FOUR *sitios* for the raising of cattle and horses.

At the last publication, on August 12, 1821 (R., 41), it appears that Rev. Father Fray Juan Bano, agent of the mission of San Xavier del Bac, together with Xavier Ygnacio Sanches and Francisco Flores, residents of said village, were present, the former overbidding the fixed price in the name of the other residents of the village, and that the last bid by said agent, Father Juan Bano, was the sum of two hundred and ten dollars, and the same was sold to him for himself and the other residents of said village of San Xavier del Bac.

The proceedings leading up to the final sale were in regular order, when the land was offered by the board of sales first on the 13th of December, 1821 (R., 45-46), and the parties were notified that Father Juan Bano had bid for said land the sum of two hundred and ten dollars, and the same was again offered, with the understanding that on the third *almoneda* the same would be sold to the highest bidder. The third *almoneda* was held on December 15, 1821 (R., 46-47), and the public were notified that this would be the final sale. The agent of the Ortiz brothers, Manuel Escalante, and Ramón Muños, the agent of Father Bano, bid upon the property, and it was run up to two hundred and fifty dollars by Manuel Escalante, and the same was sold to the Ortizes for that sum.

It will be noticed all through these proceedings that FOUR *sitios* of land was the exact amount offered for sale, without regard to the boundaries or monuments that had been ordered to be placed at the end of the measurements, and the proceedings were regular up to this point.

On December 15, 1821, Bustamante, the president of the board and the governor intendant, ordered that the proceedings should be fully transcribed and delivered to Escalante, in order that within three days he should take such steps as he might deem proper in the matter, naming a person in Mexico to represent the parties before that court, and Escalante acknowledges receipt of this letter. (R., 47-48.)

The proceedings were made up, the amount of the purchase money, with the various taxes and charges determined, amounting in all to the sum of two hundred and seventy-two dollars and six reales, and it was ordered that payment thereof be made and a record of the proceedings be forwarded to the superior board of the treasury for its approval and action in the matter (R., 48) and Escalante duly notified (R., 48).

The provincial board of sales issued an order of notice and its approval in the matter to the superior board of the treasury (R., 48-49), and Bustamante, the intendant, ordered that these resolutions be complied with (R., 49).

Then follows the entry in the book of the treasury at Arizpe of the amount of the sale and charges (R., 49), and the same was duly certified to at Arizpe on December 17, 1849, by Tomas de Escalante and Miguél Maria de la Fuente (R., 49).

No further action was taken in this matter until 1849, when it appears that on January 30 of that year, at Ures, Tomas and Ygnacio Ortiz presented themselves at the general treasury soliciting that title to the land be issued to them, and having made the payments as required for the four *sitios* comprising the place of San Ygnacio de la Canoa the treasury agreed to issue the title which they solicited (R., 49-50), whereupon the treasurer-general proceeded to issue the final title on February 2, 1849 (R., 50-51), wherein he states that by virtue of the power in him vested, in the name of the state, he granted and confirmed title in lawful form for the FOUR *sitios* of land for the raising of large cattle and horses comprised in the place called San Ygnacio de la Canoa, within the jurisdiction of the district of that capital, upon Tomas and Ygnacio Ortiz, warning them that if they should allow it to become totally abandoned or deserted for the space of three consecutive years, or if any person should register them, proving in that event such facts, they would be declared public lands and be adjudged anew to the highest bidder, except, however, in cases where the abandonment may be occasioned by well-known hostile invasions and only for such periods as such invasions may last; notifying them to keep within the boundaries established by the survey made in 1821 by Ygnacio Elias Gonzales, at this time deceased; observing also in every respect article 63 of the organic law of the treasury No. 26, of July 11, 1834, which requires them to maintain monuments of lime and stone under a penalty of a fine of twenty-five dollars.

Upon this the following indorsement is made (R., 51):

This title is recorded on page 75 and the other side of the respective book.

[*Rúbrica.*]

TERAN.

The treasurer of the state certifies that he received thirty dollars charges for issuance of this title (R., 51), and the whole concludes with the certificate given at Ures, February 2, 1849, and signed by Antonio T. Peralta (R., 52).

YGNACIO BONILLAS testified, on behalf of the plaintiffs, that he was thirty-seven years of age, resided at Magdalena, Sonora, Mexico, and is by profession a mining engineer and surveyor; is familiar with the Spanish language, as it is his native tongue; has had experience surveying lands claimed under Spanish and Mexican titles since 1883; has surveyed this grant. The data upon which he made the survey was taken from the *testimonio*. He has found the *expediente* of this *testimonio* in the office of the surveyor-general at Hermosillo, and he states that on the back of the *expediente* is a note that the title was issued, signed by Teran with his *rúbrica*, this indorsement, however, bearing no date. The *expediente* was on duly stamped paper. He thinks the signatures of Escalante, Fuente, and Teran are genuine. Witness testifies that the map he made correctly represents the tract of land called for in the *testimonio* as the San Ygnacio de la Canoa grant, according to the landmarks set out in the title papers; that he found every monument called for in the papers, with the exception of the center monument, which could not be found, because

it has probably been washed away. The grant of land called for was four leagues, and the area found within the monument was 46,696.02 acres. The map was made from his notes. Witness identifies the signature of Antonio T. y Peralta.

The witness then describes the manner in which he surveyed the grant, to which I desire to call the especial attention of the court. (See R., 14, 15, 16). The map in the record is a copy of the map based upon this survey, and according to it the grant contains 46,696.02 acres.

Witness had examined a large number of *expedientes* in the archives at Hermosillo and had made memoranda of some. Each one of the *expedientes* which he examined was contained in the printed catalogue of *expedientes* of 1869, and were considered genuine by himself and the Mexican authorities. (Exhibit C was here offered in evidence over the objection of the Government. It consists of notes made by Mr. Bonillas from the various *expedientes* in the *toma de razon*, which he had examined, and will be found R., 58-67.) Witness identifies translation of a letter signed by José Maria Mendoza, dated Arizpe, November 20, 1830 (Exhibit D, R., 67, 68).

Identically the same letter was written to a number of individuals claiming different grants, wherein Mendoza states that the commissary-general of the state charged him to deliver to the interested parties several titles of grants and other confirmations of land surveyed, appraised, auctioned off, and adjudged by the treasury of the federation before the classification of the revenues, after having first received the fifty dollars of fees to

which each one is subject, and there being among the said titles that of the individual to whom he addressed the letter.

[NOTE.—Having had occasion to observe the actions of Mr. José Maria Mendoza, I have concluded that his desire to inform certain gentlemen that they could obtain titles of confirmation from his office was induced by the fact that a fee of fifty dollars per title was to be obtained therefor.]

The plaintiffs offered in evidence certificate of Mr. Aguilar, the present treasurer-general of the state of Sonora, dated February 5, 1895 (Exhibit E, R., 68), as to the authenticity of a document which purports to be a letter signed at Arizpe, January 16, 1831, within the initials "J. M. M.," which I assume is José Maria Mendoza, directed to Ramón Romero, and it is substantially the same as the other letter. The grant in this instance, however, is the San Rafael de la Zanja, one of the grants situate in the present territory of Arizona, a suit for the confirmation of which is now pending before the Court of Private Land Claims, and is similar to that of the Sonoita claim, and is to be found in this record (R., 70-77).

Plaintiffs next offered in evidence certificate of treasurer-general Aguilar (Exhibit F, R., 68, 69). Counsel for plaintiffs stated that this was offered to show a statement or admission by the chief federal officer of the republic of Mexico in the year 1831 that the public lands had been sold as stated, and that at that time, 1831, he received payment for lands sold in 1824. It seems that this instrument is a copy of the indorsement

on the *expediente* of the San José del Carrizo grant, issued in the year 1825.

Exhibit G (R., 69, 70) is a similar instrument indorsed on the *expediente* of the San Rafael de Juriquipa grant, made in the year 1824.

Exhibit H (R., 70) is a letter of Pablo Frayjo to Mendoza, dated January 27, 1835, giving the reason why the San Rafael de la Zanja had not been properly occupied.

Continuing, the witness Bonillas states that he has seen a number of the original *títulos* of grants named in his memoranda and referred to in Exhibit C (R., 58). That he has had in his hands the *testimonio* of the grant called Alamo de Sevilla; was appointed to make a survey of that grant in 1885; it was recognized as a good title and the owners were in possession of the grant. Has seen a certified copy of the *testimonio* of the Batana grant, situated in the district of Arizpe, and has made a number of surveys of grants in that district. The Batana grant calls for four *sitios*. He established the four corner monuments according to the calls of the title. It was recognized as a valid title and parties claiming the grant were in possession under that title. Has had a certified copy of the *testimonio* of the Cuchuta grant, for eight *sitios*, and has made a survey of it, both of all the lands within the old monuments and marked each; also placed monuments and marked the *cabida legal*. The parties were in possession of the property and the government recognized the *cabida legal*. The government recognized the *cabida legal* of other grants, and in the Batana and Cuchuta they

would have recognized the *demasias*, but the owners did not want it.

[NOTE.—This is the first suggestion which has come to my notice, either in the testimony of a witness, a written communication, or document of any kind, where one who was absolutely entitled as a matter of right under an original grant to the *demasias* refused it.]

In the Alamo de Sevilla the grant called for four *sitios*, but there were twenty-three and a half. The government issued title for the *demasias* and recognized the *cabida legal*. (I take this to mean that the parties were permitted to purchase the *demasias* under the *demasias* law, and had their grant for the *cabida legal* confirmed; that is, within the outboundaries of this grant, according to the monuments, there were twenty-three and one-half *sitios*, when the grant itself called for the specific number of four *sitios*, the *cabida legal*, and the grantee was permitted to purchase the excess of nineteen and one-half *sitios*, making the grant the same as an original grant of twenty-three and one-half *sitios*.)

On cross-examination, Mr. Bonillas testified that all the grants he surveyed had *demasias*. He surveyed the *demasias* in the Alamo de Sevilla grant. Witness states the *cabida legal* is the amount of land called for in the title papers. The land which was not included in the title, but was included within the natural objects or monuments which the parties were claiming, was required to be denounced by the parties claiming the *cabida legal* and paid for by such party, and if he did not do so, it was subject to denouncement by anybody who might want it. States the party in possession and owning the

grant had a number of privileges; he could acquire the *demasias* by paying one-half the tariff price for the public lands; in case anybody else petitioned for the *demasias*, the party owning the land was still entitled to it by paying the full price, one-half of which went to the government and the other half to the party making the denouncement. In relation to this specific grant, the witness testified as follows:

Q. Take this grant now, the grant on trial, taking the initial point as you have established it, take the courses and distances as given therein respectively—not the monuments—would it not make about four *sitios*?

A. It would make four *sitios* exactly.

Q. Then within the area of the Canoa grant as surveyed by you, there are a little more than ten *sitios*, isn't there?

A. It would be ten *sitios* and 76/100.

Q. If these title papers were given you, you would say under the custom of Mexico, or the law, or whatever it is, you would say that this title covered four *sitios*, wouldn't you?

A. No, sir; I would say that the *cabida legal* was four *sitios* and the *demasias* was six and a fraction.

Q. Six and seventy-six hundredths?

A. Yes, sir.

Q. This list that you furnished Mr. Ford and which was offered in evidence (referring to Exhibit C), does that contain sufficient data? I notice you don't give in the second one—the Batana; you don't give the name of the officer who is supposed to have issued the title on May 25, 1825?

A. That is the contents of my notes. My notes in full are "petition addressed to *Intendente Bustamante*; admitted and ordered on August 16, 1822,

for survey and other proceedings; receipt for payment signed by Fuente and Gonzales October 20, 1822; on *expediente* the following, in handwriting of Riesgo, note on 15th of May, 1825, title was issued."

Q. But this *expediente*, or rather this note there, doesn't state that Riesgo issued the title?

A. Not the way it is worded; but he signs it and was the officer at the time issuing these titles.

Witness testified in the Aribac case that the grantees in that case were the same as in this, Tomas and Ygnacio Ortiz. He testified, as to the grant in this case, that the first note on the *expediente* was made by Teran and that the note read "title was issued," but does not give the date of issue; he does not remember any other indorsement on the same by Teran; does not remember whether the certificate of Teran states that it was noted in the *toma de razon*, as he did not examine the book at the time, but afterwards, on examining it, found a note stating that title had been issued, giving the date. The note was as follows: "2d of February, 1849, title to grant was issued for four *sitios* for stock raising—raising of cattle and horses—in favor of Tomas and Ygnacio Ortiz, included in the place called San Ygnacio de la Canoa, jurisdiction and *presidio* of Tubac, said persons being residents of said place of Tubac." Signed by Teran, *rubrica*. Does not know how many grants were made in the state of Sonora between 1820 and 1849, but there were a large number; knows there were a great number made in 1833; has examined some grants made in Arizona, called *intendente* grants, commencing in 1812 and 1820 and perfected in 1825, 1833, and 1849, but does not remember whether they have such certificates

as Exhibits F and G. (See R., 68-69.) (It is admitted by counsel for plaintiffs that there are none.) Witness does not remember of a case of an entry in the *toma de razon* where the amount of the purchase money was stated; that the *toma de razon* simply states or gives the date that the title was issued, the name of the person to whom the grant was made, the area of the grant, and the jurisdiction in which it is located; the general name of the grant is also given.

On redirect examination witness states that the letters written by José Maria Mendoza, about which he testified (see R., 67-68), were written because the fees had not been paid; states that the *cabida legal* and *demasias* about which he testified exists under the law of 1863.

His recross-examination was as follows:

Q. Mr. Bonillas, the government of Mexico, so far as your examination of these titles go, didn't recognize and didn't so construe it, that the title had passed for any more land than the party had bought, although he might be claiming more land within the natural objects or boundaries, and that was the reason for the "*demasias*" law?

A. In case where title was issued for a determined area I think that was so, but in the case where the title was issued for the amount within the boundaries, for the land included within the boundaries, there was no *demasias* in such a grant. (R., 12-23.)

SANTIAGO AINSA testified (R., 23) on behalf of the plaintiffs. This witness is the claimant in the Sonoita case, which is for argument with this one, and also testified in that case. As to this case, he testifies that he is

an attorney-at-law and familiar with the Spanish language; has examined the various *expedientes* in the office of the treasurer-general of the state of Sonora, and found the *expediente* of the San Ygnacio de la Canoa grant there and made an examination of it in 1893. (It was here admitted by the United States that the San Ygnacio de la Canoa grant is in its proper place in the archives of the treasurer-general of the state of Sonora at Hermosillo, and is recorded in its proper place in the *toma de razon* in the office of the treasurer-general.) Witness examined the book of receipts and disbursements for the year 1849, and finds the certificate attached to the *titulo* of this grant to be a correct translation of the entry therein, the amount stated being thirty dollars, which was the fee for issuing the title. (R., 23-24.)

CARLOS VELASCO testified, on behalf of the plaintiffs (R., 24), that he is fifty years of age, resides at Tucson, and is a newspaper publisher. Witness copied from the archives of the state of Sonora the laws passed by the state of Sonora and the communications of congress; witness has a copy which he made from the third communication, dated May 9, 1825, from the office of the secretary of the state congress; it is addressed to the governor of Sonora and Sinaloa. He made this copy himself from the original document, and it is offered in evidence by the plaintiffs. (Exhibit I, R., 78.) (This document is signed by Tomas Escalante, deputy secretary, and José Jesus Almada, deputy secretary, and bears the heading, "Office of the secretary of the state congress." Its purport is that the state was claiming the right to confirm

land titles, based upon the fact that it was entitled to the revenues from the sale thereof; that there was some doubt about the matter; consequently a communication was addressed to the commissary-general, and not having received a reply he assumed that his contention was correct.)

JOSÉ MARIA ELIAS testified, on behalf of the plaintiffs (R., 24), that he is sixty-seven years old and lives at Tucson, having also lived at Tubac and Sopori; knew Tomas and Ygnacio Ortiz and has heard of the Canoa grant, first hearing of it in 1843 or 1844, when it was claimed by Tomas Ortiz; it is situated on the Canoa, about five leagues from the *presidio* of Tubac. In 1843 a man by the name of Pedro Quijada had his stock and cattle at Canoa, and he was married to a sister of the Ortizes. In 1844 he took his cattle out; in 1847-48 he knew four men farming on the grant; he himself farmed there on two occasions. The parties were there by consent of Tomas Ortiz. In 1851-52 a son of Tomas Ortiz, Jesus Maria Ortiz, was farming a place close to the old ranch. On cross-examination, he stated that he had testified as a witness the day before in the Sopori case; that he had known a man about forty-seven years of age living at Tucson by the name of Jesus Maria Elias.

He finally admitted that he had given his deposition in the Sopori case in 1880, and after controversy, and explanations to him by the interpreter, he says that the testimony given in the Sopori case was correct and that he did not know of any survey of the Sopori grant in

1848, to which fact he had testified in that case in 1880. Witness repeats that he saw a man living on this grant in 1843 or 1844, with some cattle; in 1843-44 cattle were turned loose everywhere, but in 1847-48, or thereabout, the Indians were very bad and they were driven toward the interior of the district of Magdalena and herded there. In 1849-50 neither Tomas nor Ygnacio Ortiz lived on this grant. In 1846, '47, '48 there were some families there, and in those years there were a great many massacres by the Indians and it was very dangerous. A man who was living there in 1842-43, cultivating the land, had no family, but had his cattle and stock. He did not know how long he remained there, but he saw him on several occasions. The witness testified as follows (R., 27):

Q. Didn't you testify in the Sopori case, on the 24th day of November, 1880, before the United States surveyor-general, John Lawson, at which the following question was asked: "Question. Do you know when the said *rancho* was measured, in pursuance of the alleged proceedings under the Mexican government for title?—Answer. I do; it was measured about"—(witness interrupts with answer as follows:)

A. No, sir; I have not given such testimony.

(The deposition given by this witness and referred to in the preceding question was given in the Sopori case in 1880, which grant includes this grant, and is to be found in this record (pp. 81-82).

Exhibit J is a stipulation as to the abstract of title, showing the darreinment from the original grantee to Maish & Driscoll. (R., 78-79.)

Exhibit K is a translation of a letter addressed to the treasurer-general by Francisco Fernandez. (R., 79.)

Exhibit L is a certificate by Mendoza, showing the claim to the Canoa grant, dated in 1853. (R., 80.)

Exhibit M is a letter from Tomas Ortiz to his nephew, José Elias, in relation to the *testimonio* for the Canoa grant and the conflict with the Sopori grant. (R., 80-81.)

This is all the testimony on behalf of the plaintiffs.

On behalf of the government, the deposition of JOSÉ MARIA ELIAS, taken before the surveyor-general in the Sopori case in 1880, was introduced. (R., 81-82.)

The testimony offered with relation to the adverse claim under the Sopori grant seems to have been omitted from the record, but it serves no purpose, so far as the government is concerned in this case, as the court, upon the trial of the Sopori case, sustained the contention of the government that the grant in that case was a forgery.

BRIEF AND ARGUMENT.

The proceedings in this case were initiated at the same time as those for the Sonoita grant and the cases are to be heard together. In the make-up of the *expedientes* they are identical down to the point of the issuance of final title.

The actions of the various officials in making up this *expediente* were without lawful authority and vested no equity against the government. (*Ainsa v. United States*, No. 27; Sonoita grant; Brief, I.)

No effort seems to have been made by the Ortiz brothers to obtain title from the commissary-general,

Riesgo, as was the case with Elias for the Sonoita grant. Twenty-eight years after the *expediente* had been concluded and ordered sent to the superior board of the treasury at City of Mexico for its approval or such resolution as it might determine (R., 49) the Ortiz brothers presented themselves at the general treasury of the state of Sonora, soliciting title upon the *expediente*. The treasurer-general of the state issued the title, receiving the fee of \$30. (R., 50.) In the preamble to the *testimonio* and also in the grant this officer of the state of Sonora undertook to justify his action by certain specified laws. In the preamble (R., 30) this officer claimed the national law of August 4, 1824, defining the revenues of the nation and states, conceded to the states the revenues not reserved to itself, and states one of them to be the lands of their respective districts for the disposition of which the congress of the state passed law No. 20 of May 20, 1825, and subsequent laws embodied in sections 3, 4, 5, 6, and 7, chapter 9 of the organic law of the treasury No. 26, dated July 11, 1834, the sale of lands being assigned anew to the states, which has continued and will continue to collect revenues (taxes) by virtue of the general law of classification, dated September 17, 1846.

In order to ascertain the lawfulness of the act of the treasurer-general it is necessary to determine the question as to whether the vacant public lands belonged by full title, with right of disposition, to the states; and if so, when did they pass from the national government.

It has been contended in the case of *United States v. Coe* (Algodones grant) that the states were originally the

owners of the vacant public lands, but I am not sufficiently impressed to say more than was said in that case.

It clearly appears the state laws of May 20, 1825, and July 11, 1834, providing for the sale of the vacant public lands, derive their national authority from the revenue law of August 4, 1824.

I have contended that the vacant public lands of the nation were in no way the subject of any provision of the law of August 4, 1824, and were not placed thereby under the jurisdiction of the revenue officers of the national government, nor assigned in terms or by implication to the states. The policy of the government on the vacant public lands was defined and declared in the law of August 18, 1824 (colonization law). The vacant public lands were evidently intended to be held for colonization at least until the government should make some other disposition. No machinery was provided by the national government for the sale of any vacant public lands until the regulation promulgated under the law of January 26, 1831.

The vacant public lands are not mentioned in this law nor in the regulations of July 7 and 20, 1831, and it may be doubted with great force whether this law and regulations were intended to affect in any way the dispositions of the vacant public lands. But, recurring to the original policy declared by the colonization law and keeping it in mind until we can discover a change, I think whatever rights the states had can be ascertained. The state of Sonora, because of its immunity from strict surveillance and control, on account of its great distance

from the federal district, had, as Mr. Orozco said, "susceptibilities, and susceptibilities that were sometimes dangerous," which may account for its extravagant claims to the public lands from time to time. The third article of the colonization law directs that the states shall enact as soon as possible laws or regulations for the colonization of their respective demarkations in strict conformity with the constitutive act, the general constitution, and the rules established by this law.

The preceding article (2) of this law states its object to be the colonization of the vacant lands of the nation. In delegating the right to the states to dispose of the vacant lands in their respective demarkations, nothing contained therein warrants the assumption that title passed. Judge Castañeda, in his testimony in the Coe case, speaking of the state laws of May 20, 1825, and July 11, 1834, said it was not claimed they were intended for colonization nor in pursuance of any of its provisions. The third article of the colonization law is the only source from which the states derive any rights to intervene in the matter of vacant public lands.

I have been unable to find that a single state of the Mexican republic, except Sonora, ever claimed any rights to or over the vacant public lands under any of the provisions of the law of August 4, 1824. During the period of the Central System, 1835 to 1846, the states and officers had no existence, and the departments were under the exclusive control of the national government, and the vacant public lands were the special subject of consideration owing to the enormous public debt the country was compelled to carry. The first direct declaration

on the subject, wherein revenue was to be considered in providing for colonization, is found in the law of April 4, 1837 (Reynolds, 222), and subsequent laws and regulations, April 12, 1837 (*ibid.*, 223), April 17, 1837 (*ibid.*, 224), September 15, 1837 (*ibid.*, 227), June 1, 1839 (*ibid.*, 232). Upon the reestablishment of the federal system, the vacant lands were distinctly provided for in the revenue laws.

The laws of August 22, 1846 (*ibid.*, 256), reestablished the constitution of 1825. The law of classification of the revenues September 17, 1846 (*ibid.*, 257), is referred to by Mr. Teran in the preamble and grant as his authority. Among the revenues reserved therein to the national government is the following:

ART. 3. The proceeds from the sale of free lands which the law assigns to the federation. El producto de la venta de tierras libres que la ley consigna á la federación.

It will be noticed, commencing with the decree of April 4, 1837, that the vacant lands were made the object of revenue as well as colonization, and probably to prevent the states from making any such claim as the state of Sonora seems to have made under the law of August 4, 1824, originally classifying the revenues, a specific article (3) was inserted reserving these revenues to the federation.

A plan of colonization was provided for in the establishment of the bureau of colonization (Reynolds, 261, 263, 276). It seems to me there is no ground left for the contention that the treasurer-general of the state of Sonora had any authority from the national government

to extend a title on this old *expediente* completed twenty-eight years before. I think I have in this and the Coe Case demonstrated that the vacant public lands had never been assigned to the states as claimed, nor had the national government ever recognized any such fact except such as might arise under the third article of the colonization law of August 18, 1824.

If the vacant public lands did not belong to the nation, then Teran's act in issuing this title was unlawful; but if they had been ceded to the states, did that cession include land which counsel claims had been segregated and sold to the Ortiz brothers in 1821? Assuming the position taken by counsel in the Sonoita grant (*Ainsa v. United States*, No. 27), that upon the conclusion of the *expediente* payment of the purchase money and order of transmittal to the superior board, some property right vested which was strong enough to sustain a lawful demand for title, then the cession to the states did not carry this land, and it was not part of the vacant public domain, but was private property, and the only jurisdiction the state acquired over it was political.

Admitting for this purpose that the vacant public lands had been ceded to the states, the only ground upon which the right of treasurer-general Teran to issue this title based upon the ancient *expediente* is, that the proceedings in 1821 had not reached that stage where the land was segregated from the public domain and vested as private property in the Ortiz brothers; to make such an admission in this case would be to denounce the action of Juan Miguel Riesgo in the Sonoita grant as without authority. I respectfully commend to the careful

consideration of counsel these evidently inconsistent positions.

If this land came under other than the political jurisdiction of the state, the same was forfeited for failure to present the matter for composition and confirmation. (LAW NO. 27, STATE OF SONORA.)

Until special agents Tipton and Flipper visited Sonora last February I was not aware of this law, but it is translated in their report, page 104. The law No. 167 of July 10, 1830, referred to therein, they were unable to find, but it is evident that both laws had reference to the composition for and confirmation of titles which had not been completed, and it would seem that the Ortiz brothers were not at all solicitous about their title, although counsel contends they were continuously in possession, use, and occupation under the old *expediente*.

The law of Sonora of May 30, 1834 (Reynolds, 184), provides for presentation by holders of incomplete title. The decree No. 10, June 28, 1833, we were unable to find. Again, the state in its law of July 11, 1834 (*ibid.*, 186-188), article 61, declares unless the provisions of the same and of No. 10 of May 30, 1824, are complied with, the lands shall be considered public lands and denounceable.

The next law of the state on the subject is No. 51, May 12, 1835 (report special agents Tipton and Flipper, 104.) Article six of this law clearly places the judgment of absolute denouncement upon this title so far as the state could do so.

The principal ground upon which it is sought to sustain the extension of title in this case, as in the Sonoita

case, is that the Mexican nation has recognized the acts of the various officials as being lawful and binding upon it; that the Mexican attorney-general has repeatedly held these titles to be valid and the proceedings leading to the same in due form. I have never seen an instance where the Mexican attorney-general, if such an officer every existed, passed upon any grant of land or any questions arising therefrom. In their zeal to sustain these grants I fear counsel overestimate the dignity and powers of the legal advisers of the local officials who attempted to extend these titles; and I insist that prior to the treaty the Mexican nation did take notice of the condition of affairs, such as existed in Sonora, and placed its judgment of condemnation thereupon. It must have done so in 1846, prior to the time Teran attempted to extend this title.

On December 4, 1846, a code of colonization and public lands was promulgated (Reynolds, 276), which provided for the sale of all public lands under the direction of the bureau created November 27, 1846 (*ibid.*, 261). On December 4, 1846, regulations for the bureau of colonization were issued (*ibid.*, 263) and transmitted to all the governors of the states with this code, which recommends an exact compliance with the decree establishing the bureau of colonization, and states the reasons for reducing the price of the public lands below ten reals per acre, the price fixed by the law of April 4, 1837. It is there stated (*ibid.*, 278):

The government has believed it ought to leave to congress to decree certain transcendental points,

such as those relating to the internal government of the colonies, the formation of states composed thereof, and the religion of those where the inhabitants are not Catholics, and also reserved to congress the decision of the cardinal point as to whether the matter of colonization should remain reserved to the federal power, as is absolutely necessary, that it be carried out under uniform rules and that it have the most complete effect, applying, nevertheless, to the states a part of the proceeds from the public lands sold, and another to the redemption of the public debt and to the capitalization of the salaries of employees who may wish to retire from the service.

In none of the laws or regulations subsequent to the reestablishment of the federation is the treasurer-general of the state of Sonora authorized to make grants of land, to extend title upon old *expedientes*, or to intervene in the matter of the public lands in any way; and it must be clear that the whole policy of the law was to resume absolute control over the colonization and disposition of the public lands thereunder for revenue by the national government. Such specific laws and regulations and such a perfect system as was provided must of necessity have pronounced the acts of the various treasurers-general of the state of Sonora, in attempting to extend titles, as nullities. It will be noticed that the federation is, by these laws and regulations, asserting its right to and control over the public lands lying within the states for colonization and for sale for revenue, to the same extent and for the same purpose that it asserted its right to compel all the states to colonize by donations under the provisions of the law of August 18, 1824.

The decree of September 17, 1846 (Ibid., 257), reenacted article 3 of the law of September 21, 1824 (Ibid., 123), which made it the duty of the commissary-general to collect in the states the revenue belonging to the republic, and this officer was not only to collect the revenues due the national government, but was to collect the one-third part of the proceeds from the sale of the vacant public lands and apply it to the payment of the contingent of the states (Ibid., 260), so that the state officers were precluded by virtue of these regulations from having anything to do with the national revenues and finances, and where can it be found that a treasurer-general of a state in 1849 had authority to extend a title based upon the law of September 17, 1846, or any other proceedings, law, order or decree?

The whole system which is sought to be bolstered up by repeated unlawful and arbitrary acts of commissaries-general and treasurers-general, was denounced by competent and lawful superior authority pending the negotiations for the treaty. On November 25, 1853 (Ibid., 324), Antonio Lopez de Santa Ana annulled the sales of lands made by the states and departments and declared that the public lands were the exclusive property of the nation and never could have been alienated by virtue of decrees, orders, and enactments of the legislatures, governments, or local authorities of the states and territories of the republic; also that the sales, cessions, or any other class of alienations of said public lands that have been made without the express order and approval of the general powers, *in the manner prescribed by the laws*, were null and

of no value and effect. In that decree it is also directed that the officials, authorities, and employees, upon whom devolves the execution of the decree, shall proceed, as soon as they receive it, to recover and take possession in the name of the nation of the lands comprehended in the first article that may be in the possession of corporations or private individuals, whatever may be their prerogatives or position.

It also provides that the judicial, civil, or administrative authorities shall admit no claim of any kind, nor petitions whose purpose is to obtain indemnification from the public treasury for the damages the unlawful holders or owners may allege, under the provisions of the preceding article; and they shall preserve their right only against the persons from whom they obtained the lands which they are now compelled to return.

This decree was the law of the land at the time the treaty was entered into with Mr. Gadsden. It was a construction placed by competent authority upon every title similar to those presented in this case, and although not embodied in the treaty, yet when we come to determine our obligations under it according to the laws of the country, we must read into the treaty as a part of it the law of the land as declared by the supreme treaty-making power at the time we assumed the obligation to recognize only such titles as that government itself was in conscience bound to recognize. I do not care whether Santa Anna's government was obtained by force or revolution, whether it was dictatorial or monarchical in its form, purposes, or intents, it can not be gainsaid that his

government was the supreme authority in Mexico, which the United States recognized in negotiating the treaty.

The integrity of the same can never be questioned by the judicial branch of this government when the political department has seen proper to recognize its supremacy in Mexico by entering into with it the most solemn obligation known to nations. I am aware that there is a spirit of prejudice, unjust as I believe it is, against Santa Ana, but we are in no position to challenge or permit to be challenged in the courts of the land the right and power of that government to pass upon the validity of the acts of officials, or upon the validity of titles to public lands which had been attempted to be taken from it, part of which land subsequently fell within the limits of the United States.

This decree was followed by the decree of July 7, 1854 (*Ibid.*, 326), carrying out the announcement made in the former decree. It was the outgrowth of it and necessary in order to make it full and complete. I desire to call to the attention of the court the sixth article of this decree, which shows that the government understood and construed the laws of the country as I have attempted to do in this case, to wit, that the vacant public lands could not be disposed of by any one except in pursuance of the declared purpose of extending and promoting colonization under the law of August 18, 1824. It appears that Santa Ana was not attempting to forfeit titles, was not attempting to deprive individuals of their property without due process, but was denouncing certain characters of title within which was included the one in this

requisites referred to in the preceding article (two), or in contravention of the provisions of article four of the law enacted by the general congress on August 18, 1824, were void and of no value, showing clearly that dispositions of the public land, made prior to that time, in order to be lawful, must have conformed to the system of colonization adopted on August 18, 1824, and which was evidently continued in the department of revenue commencing with the decree of April 4, 1837. (*Ibid.*, 222.)

I do not suppose it has ever been contended that where a grant was made to an individual by competent and lawful authority it was subject to denouncement or failed of recognition by any government. I have no doubt the stringent provision contained in the first subdivision of section 13 of the act of March 3, 1891, creating the Court of Private Land Claims, originated because] certain members of congress, in their investigations, found that an attempt had been made to strip the Mexican nation of its public domain by various officials pretending to act under laws that had ceased to exist, and in the distant territories, departments, and states where the national officials could not be subjected to strict surveillance and supervision, often being residents, and probably involved in intrigues against the national government, they were unreliable sources from which to draw information.

This may also account for the failure of congress to insert in the act that "the usages and customs" of the country were to be considered as one of the principles under which adjudication was to be had, such as was

case. By his grace he permitted the holders thereof to make composition with the government and obtain under such terms as might be prescribed a complete title to their property.

After Santa Ana was deposed, Martin Carrera, general of division, president *ad interim*, extended the time by his decree of August 20, 1855 (*Ibid.*, 328), for presenting these titles for composition, and specifically refers to the law of July 7, 1854.

Juan Alvarez, president *ad interim*, on December 3, 1855 (*Ibid.*, 329), denounces the decrees of Santa Ana as having been promulgated without authority, and pronounces valid all grants issued between September, 1821, and the date of his decree, 1855, which had been issued by the superior authorities of the states or territories under the federal system by virtue of their lawful faculties, and by those departments or territories under the central system, with the express authorization or consent of the superior government, if the acquisition of said lands be in conformity with the existing laws (*Ibid.*, 329). Comparing this decree with the declaration contained in the law of July 7, 1854, promulgated by Santa Ana, it will be found that they are identically the same in effect. One denounces titles not lawfully and regularly issued and the other confirms titles lawfully and regularly issued.

It will be noticed, in article three of this decree, the still further declaration is made, which exactly conforms to the language used by Santa Ana in his decree of July 7, 1854, that the alienations of land made by the authorities of the states, departments, or territories, without the

included in the California act of 1851; further realizing that many of the decisions of this court, repeatedly cited by counsel in this case, were based upon the broad terms of that act, and that many confirmations were obtained under it of titles that could never bind the conscience of the Spanish or Mexican governments, it declined to insert as a principle of adjudication in the act of March 3, 1891, either the usages and customs of the country or the decisions of this court applying under restrictions imposed. Finding these words omitted from this act, and observing the restrictions imposed by the thirteenth section, and especially the first subdivision thereof, we must attribute to congress some intelligent purpose in declining to recognize the titles extended upon old *expedientes* by Juan Miguel Riesgo and Antonio Teran y Peralta.

Concluding this branch, I respectfully suggest to the court that we have been able in these two cases, Conoa and Sonoita, to work out a continuous, consistent, and complete system of laws regulating the disposition of the public domain from 1786 to 1853. Subjecting all of these claims to the system provided for by law during the time the grants are alleged to have been executed and extended, it is submitted that they can not be sustained under the Santa Ana decrees and subsequent decree, nor under the law authorizing their presentation to the judicial branch of this government.

II.

The grant, if valid, was limited to four *sitios* (17,353.84 acres), and the claim according to the location by Mr. Bonillas contains 46,696.2 acres. Assuming the initial

point can be found as claimed, still, according to the survey in the *expediente* as now attempted to be retraced by Mr. Bonillas, instead of four *sitios* it contains ten and seven-tenths, so that, although it was possible for the surveyor to have located and monumented four *sitios*, he did not do so (but simply designated a larger area within which the location might have been made), and failing to do so, the claim falls within the prohibition of the treaty and within the principle decided in the Ainsa case (Nogales grant), 161 U. S., 208.

The boundaries defined and monumented contain ten and seven-tenths instead of four *sitios*. A grant is not located within the meaning of the treaty where the lands so granted can not be identified by the boundaries called for in the grant.

The court did not file an opinion in this case, and by reason of the peculiar wording of the decree, which was drawn by counsel for the plaintiff and approved by the chief justice, it is contended that four members of the court have concluded the positions taken by a majority in the Sonoita grant (*Ainsa v. United States*, No. 27), San Rafael del Valle grant (*Camou v. United States*, No. 28), and Babocomori grant (*Perrin v. United States*, No. 30), were incorrect, and they would, if these cases were now before the court, hold them all entitled to confirmation according to boundaries by natural objects.

I am not authorized to speak for the majority of the court, nor am I able to affirm or deny the correctness of the claim, but it would seem if any one of them concluded he was wrong in any other case, it was due to

himself to so state, but I am able to call the court's attention to a very carefully prepared opinion by Mr. Justice Murray (R., 102), giving his reasons for holding this grant invalid and not entitled to confirmation.

It is respectfully submitted the judgment should be reversed and the petition dismissed.

MATTHEW G. REYNOLDS,
Special Assistant to Attorney-General.

JOHN K. RICHARDS,
Solicitor-General.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 297.

THE UNITED STATES,

Appellant,

against

FREDERICK MAISH AND THOMAS DRISCOLL, PARTNERS,
AS MAISH & DRISCOLL,

Appellees.

**BRIEF ON BEHALF OF THE SOPORI LAND & MINING
COMPANY.**

Appellees Maish and Driscoll filed their petition in the Court of Private Land Claims, praying confirmation of a Mexican grant of lands situated in Pima County, Arizona, commonly known as the "San Ygnacio de la Canoa" land grant.

When the case was reached for trial, it appearing that the Sopori Land & Mining Company had also filed a petition for the confirmation of said grant, the Court ordered that company to be made a party defendant; whereupon said company appeared by its counsel (record, p. 11), and the trial proceeded as upon a consolidation of said two petitions, resulting in a decree adjudging "that the claim of the petitioners and of the defendant, the Sopori Land & Mining Company, for the tract of land embraced within the said grant as designated by the aforesaid map, be and the same is confirmed to the heirs and legal representatives of the said Tomas and Ygnacio Ortiz;" (record, p. 101), from which decree this appeal is taken by the United States.

No citation on the appeal was served upon the Sopori Land & Mining Company and it is not named in the appeal papers as

a party to the action, but it has entered its appearance herein by its counsel and this brief is filed in its behalf; and also, with the consent of their counsel, in behalf of said Maish & Driscoll, the interests of said appellees and said company in this action being the same.

Claim to the land involved is asserted under a title issued February 2, 1849, by Antonio Teran y Peralta, then treasurer general of the state of Sonora, Mexico, to Tomas and Ygnacio Ortiz, which title was based on proceedings had in the year 1821 upon a petition by the said Ortiz brothers to the intendent of the provinces of Sonora and Sinaloa, resulting in a sale of said lands by and under the direction of said intendent to the petitioners, and the payment by them of the purchase money. These proceedings up to and including the survey of the land and the thirty pregones or advertisements for the sale were had prior to the achievement of Mexican independence, September 28, 1821. The final sale and payment were made after that date, the money going into the treasury of the newly established nation. (Record, pp. 30-49.)

It is conceded that the grant papers are genuine; that the original expediente remains in the archives of Sonora; that the grant is properly entered in the book of Toma de Razon, and is in the usual and regular form and shows the proceedings customarily observed in making such grants.

A survey of the grant discloses that there are within the monuments mentioned in the title papers, 10 and 76-100 sitios instead of 4 sitios as therein stated, and it is claimed on the part of the United States that the grant is one for the specific quantity of 4 sitios within the larger tract marked by the boundaries mentioned, and that as the particular 4 sitios had not been designated prior to the treaty of 1853, the grant was not then located within the meaning of that treaty and hence is not within the jurisdiction of the Court of Private Land Claims to confirm.

Confirmation was and is also resisted by the government on the ground that the title was not lawfully and regularly derived, because the officer who issued it had no power to do so.

The claimants contend:

1. That Antonio Teran y Peralta, as treasurer general of the state of Sonora, had lawful authority to issue grants of

vacant public lands within that state, and that the title issued by him in this case being based upon proceedings uniformly recognized by the government of that state, and of the nation, as a proper and lawful foundation for the issuance of final title, and being complete and perfect in form, vested in the grantees the fee of the lands described.

2. That if this be not so, yet that the proceedings prior to the issuance of final title vested in the grantees a right under Mexican law to demand that their title should be made perfect, and that, therefore, the United States are bound to respect said grant, and the decree confirming the same is correct.

3. That the grant is one by metes and bounds according to a survey actually made, and conveys title to all the lands within the boundaries named, though in excess of the quantity stated; or

4. In case the grant be one of quantity embraced within the larger tract marked by the boundaries, that it was "located" within the meaning of the treaty of 1853.

The facts appearing in evidence on the trial in the Court below are stated in the other briefs filed herein, and need not be here repeated.

ARGUMENT.

I.

The power of the Treasurer General to make grants and issue titles to vacate public lands.

The documents evidencing this grant are regular in every matter of form; their genuineness is conceded; the expediente is found in the Mexican archives; the original testimonio was produced upon the trial in the Court below, coming from proper custody, and the grant is entered in Toma de Razon. The issuing of the title thus evidenced raises the strongest presumption that the officer who assumed to issue it had power to do so under Mexican laws. This principle was early established and has been uniformly recognized and acted upon by all branches of our government in dealing with grants of land made by the former sovereigns of acquired territory.

In the leading case of *U. S. vs. Arredondo*, 6 Pet., 728, this Court laid down the rule that

"The acts of public officers in disposing of public lands by color or claim of public authority, are evidence thereof until the contrary appears by the showing of those who oppose the title set up under it and deny the power by which it is professed to be granted. Without the recognition of this principle there would be no safety in title papers and no security for the enjoyment of property under them."

Again, in *U. S. vs. Peralta*, 19 How., 347, the Court said:

"The presumption arising from the grant itself makes it *prima facie* evidence of the power of the officer making it, and throws the burden of proof on the party denying it."

To the same effect are

Delassus vs. U. S., 9 Pet., 134.

U. S. vs. Clarke, 8 Pet., 452.

Strother vs. Lucas, 12 Pet., 438.

And many other cases.

It is not necessary, however, to rely upon presumption. The title itself refers to the laws under which it was issued, and, upon examination, they will be found to confer the power claimed.

To determine whether these laws were valid and were in force in 1849, when this title was issued, it is necessary to examine briefly the constitutional and statutory law of Mexico touching the distribution of powers between the nation and the states, and governing the disposition of the public lands.

On February 24, 1822, the Constituent Congress, elected under the provisions of the plan of Iguala and treaty of Cordova, assembled at the City of Mexico for the purpose of forming a constitution, but, instead, elected Iturbide as emperor on May 19, 1822, and was by him dissolved in the following October. The Congress re-convened in March, 1823, in which month Iturbide abdicated and the Congress declared that all the acts of his government, including a colonization law passed in January, 1822, were illegal.

Reynolds, 31-32.

This Constituent Congress, on January 31, 1824, adopted what is known as the Constitutive Act of the Mexican federal

tion, which continued to be the fundamental law until the adoption of the Constitution in October of that year. It formed the basis of that Constitution and is referred to in connection with it in subsequent legislation as forming part of the organic law of the nation.

This Constitutive Act declares:

"Art. 1. The Mexican Nation is composed of the provinces comprised in the Viceroyalty, formerly called New Spain, in what was called the Captaincy General of Yucatan and in the commandancies General of the Internal Provinces of the East and of the West."

* * * * *

"Art. 5. 'The nation adopts for the form of its government, a popular, representative and federal republic.'"

"Art. 6. 'Its integral parts *are free, sovereign and independent states, in so far as regards exclusively its internal administration*, according to the rules laid down in this act and in the general constitution.'"

"Art. 7. The states at present comprising the federation are the following, viz: Guanajuato, the internal state of the west, composed of the provinces of Sonora and Sinaloa," etc., etc.; "the Californias and the District of Colima will for the present be territories of the federation, and directly subject to its supreme power."

1 White, New Recop., 374 et seq.

The language used indicates that prior to the adoption of the constitution of 1824, the Mexican states were independent of each other and not merely political sub-divisions of a single state.

That this is the view taken by the Mexicans themselves is apparent from the wording of the "Act of Constitutional Reforms," adopted May 18, 1847, at the close of the most turbulent period in the country's history, that during which it had been governed under the so-called Central System.

This Act in its preamble recites:

"That the States of Mexico, *by a spontaneous act of their own individual sovereignty*, and to consolidate their independence, guarantee their liberty, provide for the common defense, establish peace and procure the welfare thereof, formed a confederation in 1823, and afterwards in 1824, constituted a political system of union for their general government, under the form of a popular, representative republic, and upon

the pre-existing foundation of their natural and reciprocal independence."

Reynolds, 281.

From the foregoing, it would seem beyond dispute that the provinces in New Spain, which revolted against the mother country upon achieving their independence, became sovereign and independent states. If so, it is undeniable that they possessed the title and right of disposition to the public lands within their borders as fully and completely as did the state of Texas, when, by like means, she secured her independence from Mexico.

August 4, 1824, the Constituent Congress passed a decree for the classification of the revenues, which is the first law referred to in our title. The first ten articles of that law specify the sources of the revenues of the federation.

Article 11 is as follows: "The revenues not included in the foregoing articles belong to the states."

Reynolds, 118.

August 18, 1824, a colonization law was adopted by the Congress, which contains the following provisions:

"Art. 1. The Mexican Nation offers to foreigners who may come to establish themselves in its territory, security in their persons and in their property; *provided*, they submit to the laws of the country."

* * * * *

"3. For this purpose the Congresses of the states shall enact, as soon as possible, laws or regulations for the colonization of their respective demarcations, in strict conformity with the Constitutive Act, the general constitution and the rules established in this law."

* * * * *

"16. The government, under the principles established in this law, shall proceed to the colonization of the territories of the republic."

Reynolds, 121-2.

Inasmuch as the first ten articles of the law of August 4, 1824, make no mention of the public lands or the revenues to

be derived therefrom, it is clear that this act, so far as it has any bearing upon the question, indicates that those lands and revenues belonged to the states. As will hereafter be seen, the states so construed it and acted upon that construction for many years, to the knowledge of the national government, and without protest on its part. This construction is further supported by the terms of the Act of August 18, 1824, above quoted, which, in its third article, committed to the Congresses of the states the enactment of laws for the colonization of their respective demarcations, while in Art. 16, it was provided that the national government should proceed to the colonization of the territories.

The Constitution, which was adopted October 4, 1824, contains the following:

"Art. 4. 'The Mexican nation adopts for the form of its government a popular, representative and federal republic.'"

"Art. 5. 'The *constituent parts* of the federation *are* the following states and territories, viz: The states of Sonora and Sinaloa, etc., etc.; the territories of Lower California, Upper California, Colima and Santa Fe, De Nuevo Mexico.'"

1 White, New Recop., 388.

It will be perceived that in the Constitution, as in the Constitutive Act, there are no creative words used in speaking of the states. It is not said that the former Spanish provinces are erected into states or that they shall hereafter be states, or that the Mexican nation shall be divided into states, but that they *are* states, sovereign, free and independent.

The Constitutive Act speaks of "the states of the federation." The Constitution says that the nation adopts for the form of its government, a "federal republic." These terms import a compact or agreement between independent bodies and a union for the purposes of the compact.

An address issued by the Congress which framed the Constitution, explaining and urging its adoption, shows that that instrument was patterned after the Constitution of the United States. Among other things, it says that, in discharging its functions, "it had fortunately to do with a people obedient to the voice of duty and a *model to imitate in the flourishing republic of our neighbors to the north.*" (1 White, 382.) This declaration emphasizes what is apparent from the language of

the Constitution itself, that it was the intent to establish a dual system of government similar to our own; each sovereign and independent within its sphere.

The Constitution is silent in regard to the public lands. It contains no cession of them by the states, nor any grant of authority over them to the nation. If, therefore, the public lands belonged to the states prior to the adoption of the Constitution, they remained their property after it went into effect.

3 Washb. on Real Prop., 164-5.

Terrett vs. Taylor, 9 Cranch, 50.

Clark vs. Smith, 13 Pet., 195-201.

The several Mexican states acted upon this view of their rights.

Chihuahua passed a law for the disposal of its public lands May 26, 1825.

Reynolds, 132.

Coahuila and Texas passed a law for the same purpose May 24, 1825.

Republic vs. Thorn, 3 Tex., 499.

And on May 20, 1825, the State of the West (Sonora and Sinaloa) passed the "Provisional law for the regulation of the purchase of the lands of the state," which is the second law referred to in the Canoa title. This law fixes the price at which the public lands shall be sold, prescribes the duties of the several officers having charge of the sale of lands, and establishes conditions upon which they shall be granted. Among other provisions are the following:

"19. The treasurer, as the immediate chief of all the revenues, shall make the sales and give the titles."

* * * * *

"31. Those who have an order for the registry of *sitios*, under the former practice, are guaranteed by this law."

Reynolds, 130-131.

The State of the West also embodied in its Constitution, adopted October 31, 1825, the following article plainly asserting its title to the public lands:

"Art. 109. The attributes of Congress are:

* * * * *

"XX. To make regulations for colonization in conformity with the laws."

Reynolds, 137.

So, also, the State of Coahuila and Texas, in its Constitution adopted March 11, 1827, asserted that "all kinds of vacant property within its limits and all intestate property without a legal successor shall belong to the state."

Chambers vs. Fisk, 22 Tex., 522.

On July 11, 1834, the Congress of the State of Sonora, that state having been previously separated from Sinaloa, adopted the "Organic law and provisional regulations for the treasury of the State of Sonora." This law established a complete system for the administration of the fiscal affairs of the state, prescribed the sources of revenue and the duties of officers in connection therewith, and enacted comprehensive regulations touching the sale of the public lands. Among others, it contained the following articles:

"Art. 53. The revenues and fees established in the state are:

* * * * *

2. Revenue from the composition and grant of lands.

3. Fees for titles to grants of lands."

* * * * *

"Art. 60. The treasurer, as the immediate chief of all the revenues, shall make the sales and issue the titles."

Reynolds, 187-188.

These constitutional provisions and laws of the several states relating to the sale of their public lands must have been known to the general government, for the national constitution in sub-division 9 of article 161, provided that each of the states is obligated:

"IX. To forward to the two Chambers, and, when they are in recess, to the Council of Government, a certified copy of their Constitutions, Laws and Decrees."

1 White.

This provision was doubtless inserted in the national constitution for the reason that the national congress, instead of the courts, was made the judge of the constitutionality of the laws and had the power to annul laws of the states if unconstitutional.

It must be presumed that the state officers discharged the duty thus imposed upon them, and that the national government was promptly advised of the laws of the several states.

That these laws of the State of Sonora were never annulled by the general government under the federal system is persuasive evidence of their validity, and that under that system the states possessed the power of alienating the public lands.

Clinton vs. Englebrecht, 13 Wall., 434.

Gonzales vs. Ross, 120 U. S., 605.

Especially is this so in view of the fact that the national government was uniformly jealous of encroachments upon its prerogatives and freely exercised its power to annul laws of the states if in conflict with the constitution.

Both the Constitutive Act and the Constitution of 1824 contain specific grants of power to the national government and enumerate the powers surrendered by, or withhold from, the states; but the power to sell vacant lands is in neither instrument given to the former nor denied to the latter.

Indeed, none of the constitutions or constitutive acts, prior to the constitution of 1857, contained any provisions with reference to the disposition of the public lands, and prior to that date the general government never annulled laws of the states on the ground that the latter did not possess the power of alienation, though laws were annulled for conflict with the colonization law of 1824 respecting grants to foreigners within the border or littoral leagues.

By article 72 of the constitution of 1857, however, the national congress was given power for the first time "to fix the rules to which the occupation and alienation of public lands ought to be subject, and the price of said lands." Under this provision the federal government in 1862 declared null and void a resolution passed by the Congress of the State of Sinaloa, claiming the right to alienate public lands, and in the same year also annulled laws of the State of Chihuahua passed

in 1857, 1858, 1861 and 1862, which applied to the revenue of the state the price of lands sold.

Hamilton's Mexican Law, 151-152.

It is thus seen that when power over the alienation of public lands was given to the federal government, it was prompt to annul laws of the states conflicting therewith, and the inference from its non-action prior to that time would seem irresistible that it did not then possess the power.

Not only were the laws of the states providing for the disposition of public lands not annulled, but the right and power of the states to enact such laws was repeatedly recognized by the general government.

The provisions of the general colonization law of 1824 directing the states to enact laws for the colonization of the lands within their demarcations have already been quoted. Though passed before the adoption of the federal constitution, it remained in force and seems to have been treated as a part of the organic law of the nation. This law, together with the regulations for carrying it into effect, adopted in 1828, continued to be the sole source of power under which governors made grants in California and other territories until the period of the Mexican war.

U. S. vs. Vallejo, 1 Black, 541.

U. S. vs. Vigil, 13 Wall, 449.

The regulations of 1828, above referred to, were adopted three years after the passage of the state laws hereinbefore quoted, and, being made applicable only to the territories, clearly indicate that control over the public lands in the states was conceded to them.

On April 6, 1830, the federal congress passed a law, from which the following is taken:

"Art. 3. The government shall have power to appoint one or more commissioners to visit the colonies of the frontier states, to contract with their legislatures for the purchase, in the name of the Federation, of the lands they may consider suitable and sufficient for the establishment of colonies of Mexicans and of other nations, to enter into such arrangements with the colonies already established as they may deem proper for the

security of the republic, to see to the exact compliance with the contracts upon the entry of new colonists, and to examine as to how far those already entered into have been complied with.

4. The executive shall have the power to take the lands he may consider suitable for fortifications and arsenals, and for new colonies, and shall give the states credit for their value on the accounts they owe the Federation."

Reynolds, 148.

Of this law the Supreme Court of Texas has said: "It contains a plain and unequivocal recognition of the full right of the state to the vacant domain in her limits, and of her right to dispose of it."

Chambers vs. Fisk, 22 Tex., 528.

Again on April 18, 1835, another law was passed relative to the grant to Iturbide, which contained this provision:

"2. The twenty square leagues referred to in the same decree, and which he desired in Texas, shall be given to his administrator and heirs in the Territories of New Mexico or Upper and Lower California, *if it can not be done in Texas*, in such manner as the government may agree upon with those interested."

Reynolds, 192.

From the foregoing we think it most clearly appears that at the time of the establishment of the Mexican government, the title to the public lands within the states was vested in them with full power of disposition, except as limited in certain particulars not important here, and so remained at least until 1835. It is shown by the laws passed by the states to the knowledge of the general government; by the omission of the general government to annul those laws, though possessing the power had they been unconstitutional; by the express and implied recognition contained in the federal laws, and by the continued and frequent exercise of such powers by the state officers as appears from the evidence in this case.

The same conclusion as to the power of the states to make sales has been reached in the courts of Texas, though they have taken the view that the title and power of the states was not

inherent in them and did not exist prior to the colonization law of 1824 and the federal constitution, but were therein conceded by the general government.

Republic vs. Thorn, 3 Tex., 499.

Chambers vs. Fisk, 22 Tex., 504.

And this Court has said, in a case involving a grant in Texas initiated in 1830 and completed in 1833, that "the power of the governor of those states to sell lands to Mexicans not exceeding eleven leagues in quantity, is unquestionable."

Spencer vs. Lapsley, 20 How., 269.

Approved in McPhaul vs. Lapsley, 20 Wall., 284.

That the laws of Sonora of 1825 and 1834 authorized the issuing of the Canoa title by the treasurer general, is not disputed, nor is it contended that the title is not in strict conformity with those laws.

It must also be admitted that prior to the issuing of the Canoa title, these laws had never been repealed by express reference to them in any law or decree of the national or state government.

There is but one law of the national congress passed while the federal system existed which in terms attempts to prohibit any of the states from alienating their public lands, viz: that of April 25, 1835, which aimed primarily to annul a law of Coahuila and Texas. After declaring in Art. 1 that the law annulled was contrary to the general colonization law of August 18, 1824, this law provides in Art. 2:

"2. In the exercise of the powers the general government reserved to itself in Article 7 of said law of August 18, 1824, the border and littoral states are prohibited from alienating their public lands for colonization thereon, until the rules they shall observe in doing so are established."

Reynolds, 193.

It will be observed that this article prohibits the alienation of lands for purposes of colonization only, and purports to be based upon Article 7 of the law of 1824. That law, it will be seen by reference to its first article, refers especially and per-

haps exclusively to the colonization of lands by foreigners, and Art. 7, above referred to, enacts that:

"7. Prior to the year 1840 the general congress shall not prohibit the entry of foreigners to colonize, unless imperious circumstances force it to it with respect to the individuals of some particular nation."

Reynolds, 121.

While the language of Art. 2 of the law of April 25, 1835, may be broad enough to prohibit the alienation of lands for colonization either by native Mexicans or by foreigners of any nation, yet being expressly based upon and in the exercise of powers conferred by Art. 7 of the law of 1824, its effect can not, upon any principle of construction, be extended beyond the scope of that section which, as above shown, only authorized the Congress to prohibit the entry of foreigners to colonize. Thus construed, the law of 1835 does not prohibit the granting by the states of lands to native Mexicans, either as donations for purposes of colonization or by way of sale.

Arguello vs. U. S., 18 How., 539-548.

But it seems to be supposed that the laws of Sonora were abrogated or repealed by certain acts and decrees of the national government for the time being, and especially by the act which purported to abolish the states and establish the central system of government, and the laws promulgated by the ruling powers during the ascendancy of that system.

It is unnecessary to determine in this case the effect of these laws upon titles issued by state officers while the central system of government was in existence, for it had passed away long prior to the date of our title. That question is raised, and will have been fully discussed in other cases before this Court.

That for a few stormy years, beginning in October, 1835, a centralized system of government established and upheld by military power, was imposed upon the states of the Mexican Union, is not to be denied, nor that this central government passed laws which might be construed and were perhaps intended to strip the states of the power to dispose of their public lands. That system and those laws were submitted to by the states at times and at others were resisted. Texas

never acquiesced. Sonora yielded obedience for a time at first, but from 1838 to 1841 claimed its rights as a state, and her officials discharged their functions in accordance with state laws. So other states protested against the aggressions of the central government. These facts, to which others might be added, show that the centralized system never had the united support of the states or people. In fact, it soon began to decay, and its decadence had so far progressed by the year 1841 that Santa Anna and the officers of his army felt obliged to summon a congress to form a new constitution. They promulgated the "Bases of Tacubaya," in which it was declared that "the immense majority of the departments and nearly all the army have forcibly and definitely stated that they did not desire, nor did they consent to the continuation of the affairs and of the men who have governed our destinies since the year 1836." A provisional government was established and bases adopted for the organization of the republic containing the following provisions:

"First. The so-called supreme powers established by the constitution of 1836 cease in their functions by the will of the nation."

* * * * *

"Fifth. The extraordinary Congress shall meet six months after the election is ordered, and shall transact no further business than the formation of the constitution."

Reynolds, 234-6.

This congress convened in June, 1842 and was dissolved in December of that year without having fulfilled its mission. At its dissolution Santa Anna was virtually made dictator by a council of notables, summoned under the Bases of Tacubaya. In June of 1843 the dictator promulgated a new constitution, and in January of the following year the general congress provided for therein, convened, and seems to have continued in existence until the final overthrow of the central system in 1846.

Reynolds, 36-37.

On August 4, 1846, the generals, chiefs and officers assembled in the citadel of Mexico, put forth what is known as the Plan of the Citadel, in which they recited:

"First. That, since the Constitution, which the republic freely and spontaneously gave to itself, ceased to exist, those which have afterwards been made have not been conformable with the exigencies and *desires of the great majority of the nation.*"

* * * * *

"Fourth. That all the laws the present Congress may enact and the acts of the government being *void*, because neither the one nor the other is legitimate, there is, therefore, always an existing reason for the motive to continue demanding the exercise of its incontestable rights, usurped by the present administration."

Reynolds, 253.

And thereupon they proclaimed as part of a plan for the true regeneration of the republic:

"Art. 1. In the place of the Congress that now exists, another shall be assembled, composed of representatives elected by popular vote, pursuant to the electoral laws, that served for the election of that of 1824, which shall, in that manner, be charged with constituting the nation."

Reynolds, 254.

August 22, 1846, the Constitution of 1824 was provisionally re-established and the Central System finally disappeared.

Reynolds, 256.

From the foregoing brief outline it must be apparent that the centralized system of government, originating without constitutional warrant, was constantly opposed by the weight of public sentiment and finally forced by it to give way to the popular, representative republican form of government established at the beginning of the nation. The language above quoted from the various bases, plans and decrees put forth during the existence of the Central System is the more significant since it comes from the mouths of its originators and upholders. The Bases of Tacubaya and the Plan of the Citadel both confess that the will of the people was opposed to the constitutions and laws imposed upon them. These matters give additional point and weight to the law to be next referred to.

In December, 1846, the congress provided for in the Plan of the Citadel, elected in accordance with the constitution of 1824, assembled, and on May 18, 1847, passed an act of constitutional reforms.

This act fully re-established the old constitution with certain additions and amendments. To its provisions here quoted especial attention is invited, as they are believed to be of the utmost importance in the decision of this case.

"In the name of God, creator and conservator of societies, the extraordinary, constituent Congress, considering:

That the States of Mexico, *by a spontaneous act of their own individual sovereignty*, and to consolidate their independence, guarantee their liberty, provide for the common defense, establish peace and procure the welfare thereof, formed a confederation in 1823, and afterwards in 1824 constituted a political system of union for their general government, under the form of a popular, representative Republic, and *upon the pre-existing foundation of their natural and reciprocal independence*;

That that compact of alliance, the origin of the first constitution and the only legitimate fountain of the supreme power of the Republic, *subsists* in all its primitive vigor, and is, and must be, the principle of every fundamental institution;

That this same constitutive principle of the federal union, if it has been opposed by a superior force, could not and can not be altered by a new constitution;

And that, in order to further consolidate it and make it effective, in reforms which experience has demonstrated to be necessary in the Constitution of 1824, *pre necessary*, has resolved to declare and to decree, and in use of its full powers, does declare and decree:

I. *That the States that compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the Constitution for their interior administration.*

II. That said States continue under the compact that at one time constituted the political mode of being of the people of the United States of Mexico;

III. That the Constitutive Act and the Federal Constitution, sanctioned on the 31st of January and the 4th of October, 1824, form the only political Constitution of the Republic;

IV. That these codes shall be observed with the following Act of Reforms.

* * * * *

Art. 30. When this Act of Reforms is published all the public powers shall conform to it. The general legislature shall continue deposited in the present Congress, until the

assembling of the chambers. *The States shall continue to observe their own Constitutions, and shall renew their functionaries in accordance therewith.*"

Reynolds, 281-287.

Attention has already been called to the first paragraph in the preamble to this act, in which it is declared that the confederation in 1823 and the constitution of 1824 were formed by the States of Mexico "by a spontaneous act of their own individual sovereignty," "and upon the pre-existing foundation of their natural and reciprocal independence."

The language of other portions of the act in connection with this declaration is equally significant. It is recited that the compact of alliance found in the Constitutive Act is the only legitimate fountain of supreme power and still subsists. That though opposed by superior force, it could not be altered, and then it is declared and decreed that the States of the Mexican Union have "recovered" the independence and sovereignty that were reserved to them in the constitution for their interior administration. Herein is found the clearest implication that the central system of government was an usurpation from which the States had happily been relieved.

If the States "recovered" their independence and sovereignty for their interior administration, it is plain that they recovered also the laws they had themselves enacted in that behalf. But that there should be no misunderstanding in this regard, the act in Art. 30 declares: "The States shall continue to observe their own constitutions, and shall renew their functionaries in accordance therewith."

This act of constitutional reforms was not the edict of a military commander, a Plan or Bases adopted by a self-constituted body, or a law passed without constitutional warrant by a subservient congress, but was a solemn enactment by a congress elected in accordance with the original constitution of the nation. This congress was the only one so elected, or which can be said to have fairly represented the Mexican people, since the revolutionary suppression of the state governments in 1835. It convened at the close of a period of ten years of almost constant revolution and was called for the express purpose of rehabilitating the national government. The dec-

larations of this body, assembled under such circumstances, are entitled to the greatest weight.

The express language of the act shows that whatever may have been the effect of the legislation under the central system, the constitutions and laws of the states were revived in full force in 1847.

If it be conceded that under the centralized system the central government, whether existing *de jure* or only *de facto*, had power to regulate sales of lands, the laws passed to carry out that power did not work a repeal of the state laws, but merely rendered them inoperative for the time being, and upon the fall of the centralized system and the restoration of the federal system by which the states recovered the independence and sovereignty reserved to them in the constitution for their interior administration, the laws of the states again came into full force and effect.

Williams vs. Bruffy, 96 U. S., 174.

Thorington vs. Smith, 8 Wall., 1.

Tua vs. Carriere, 117 U. S., 201.

Sturgis vs. Spofford, 45 N. Y., 446.

Commissioners vs. Steamship Co., 52 N. Y., 609.

Henderson vs. Spofford, 59 N. Y., 131.

That the states so understood it, and that their power to dispose of the public lands, even if suspended during the central system, was recovered, is proven by the fact that they proceeded to exercise that power. It appears from the evidence in this case that during the years between 1847 and 1852, the State of Sonora issued more than fifty titles.

Not only did the state officers thus construe the laws, that construction was placed upon them by the national government, as appears from the following order addressed to the governor of the State of Sonora:

"Most Excellent Sir—The Supreme Government is informed that, on account of the disturbances in Upper California, especially in the gold placers, robbery and murders have increased, and that the hatred of Mexicans, Spaniards and Chilians has gone so far as to prevent their living there and that they have been forcibly compelled to re-embark, and

further information has been added to this, which indicates that in that country there are no social guarantees.

This has attracted the attention of his excellency, the president, and he, therefore, directs me to say to your excellency that he expects you to do all that is possible to attract to yourself this population, in the understanding that public lands will be given to the emigrants on credit, *and that, if that state does not cede them gratuitously or if the emigrants cannot pay, it will be given them, nevertheless, as the general government obligates itself to indemnify said state in the manner to be determined at the proper time by the general Congress.*

God and Liberty. Mexico, August 30, 1849.

LACUNZA."

Reynolds, 294.

This order, dated six months later than the Canoa title, was issued in furtherance of the decree of August 19, 1848 (Reynolds, 288-293), providing for the removal of Mexican families from the territory surrendered to the United States by the treaty of Guadalupe Hidalgo. By offering to indemnify the state for lands upon which these immigrants might settle, it recognizes in the plainest terms the title of the state.

Again, the decree of December 3, 1855, repealing Santa Anna's decrees of 1853 and 1854, which required submission to the revision and approval of the supreme government of grants or alienations of public lands made by the states or departments, declares in Art. 2 that all titles issued by the states under the federal system "shall for all time be good and valid as well as those of any other property lawfully acquired, and in no case can they be subject to any revision or ratification on the part of the government."

Reynolds, 329.

This decree manifestly was not intended to make good invalid alienations, but merely to do away with the cloud cast upon titles by the decrees of Santa Anna and set at rest any question as to their effect. It is declaratory of pre-existing rights, not a grant of new ones.

The construction thus placed upon the state and national laws by both state and national officials fully supports our contention that at the time the Canoa grant was made, the state had full power in the premises, and this construction should be respected and followed.

Ainsa vs. U. S., 161 U. S., 208.

Fremont vs. U. S., 17 How., 561.

Hornsby vs. U. S., 10 Wall., 224.

Sutherland Statutory Construction, Sec. 309.

II.

This title having been lawfully issued by the Treasurer-General, and being complete and perfect, it is immaterial whether the prior proceedings vested in the grantees the right to demand that their title be made perfect or only a meritorious claim.

The grant in this case is complete and perfect within the meaning of the act of March 3, 1891. The phrase "complete and perfect" is obviously used in contra-distinction to the phrase "which are not already complete and perfect." Both refer to the state of the proceedings for the acquisition of title, and not to the legality of those proceedings.

Ainsa vs. U. S., 161 U. S., 208.

U. S. vs. Santa Fe, 165 U. S., 675.

A complete and perfect title, in the sense in which those words are here employed, is one which required no further act of the government to convey the fee to the claimant.

Paul vs. Perez, 7 Tex., 338.

Hancock vs. McKinney, 7 Tex., 384.

Stevenson vs. Bennett, 35 Cal., 424.

U. S. vs. Arredondo, 6 Pet., 691.

U. S. vs. Reynes, 9 How., 127.

U. S. vs. Phila, 11 How., 609.

U. S. vs. Clarke, 9 Pet., 436.

U. S. vs. Sibbald, 10 Pet., 313.

McMicken vs. U. S., 97 U. S., 216.

Trenier vs. Stewart, 101 U. S., 797.

See form of such a title appended to *Menard's Heirs vs. Massey*, 8 How., 293.

The Canoa title fully meets all requirements. It purports to grant the fee of the lands described, and nothing remained to be done by the government to carry it into effect.

This being the case, and it being within the power of the officer to issue the title, it is immaterial whether the basis upon which he exercised his power was a legal right in the grantees to demand a title, or an equitable claim upon the justice of the government.

The proceedings anterior to the issuing of the title were had before Mexico achieved her independence. They had been carried on so far as to give to the grantees at the least an equitable claim upon the new government. This claim was protected by the treaty of Cordova, which contained the usual clause respecting the protection of private rights.

The Mexican government habitually respected rights such as those acquired by the Ortiz brothers, and uniformly perfected such inchoate titles.

Arguello vs. U. S., 18 How., 539.

U. S. vs. Peralta, 19 How., 343.

This being true, a title issued by competent authority in accordance with the usage and custom of the republic, though based upon an equitable or moral claim only, is just as lawfully and regularly derived as though it had been issued in satisfaction of a strict legal right.

III.

Whether the Treasurer-General had power to issue the title or not, the prior proceedings gave to the Messrs. Ortiz the right to demand that their inchoate title should be made complete and perfect.

Counsel for Maish & Driscoll have discussed the validity and effect of the proceedings before the intendent as dependent upon the written law of Mexico. Fully concurring in the views expressed, it is believed that there is still another ground

upon which it should be held that the proceedings, prior to the issuing of final title in 1849, vested in the Ortiz Bros. an inchoate title, which, under Mexican law, they could as a matter of right demand to have made complete and perfect, and that, therefore, the judgment of the Court of Private Land Claims should be affirmed, even though claimants' title was not complete and perfect at the time of the treaty of 1853.

Whatever may have been the power of the Treasurer General or of other Mexican officials under the written laws of the nation or the states with respect to the issuing of final titles based upon proceedings similar to those in the case at bar, it is incontestible that under all the forms of government prevailing in both the nation and the states, it was the uniform custom to issue such titles. That custom had continued for more than twenty-five years prior to the issuing of the Canoa title, and for more than thirty years prior to the cession of the territory in which the land covered by that title is situated. It had, therefore, acquired the force of law and is embraced within the "laws and ordinances of the government from which it (the grant) is alleged to have been derived."

There can be no question about the existence of this custom, whether it was based upon the provisions of the written law cited in the brief of counsel for Maish & Driscoll, or upon the construction of their powers by the Mexican executive officers in the absence of any express statutory authority. The summary of expedientes offered in evidence in this case under stipulation and printed in the record on pages 52 to 58, shows 59 titles issued by state or federal officers upon proceedings begun before the Mexican independence. The recently published report of Special Agents Tipton and Flipper on the condition of the archives or records of the titles to land grants in Arizona and similar grants in Mexico, contains notes of a still larger number issued on similar proceedings. The existence of this custom was recognized by this Court, and such inchoate titles were confirmed in some of the California cases.

Arguello vs. U. S., 18 How., 540.

U. S. vs. Peralta, 19 How., 343.

Under the Mexican law this custom, so long and uniformly followed, acquired the force of law, and individual rights were as much protected thereunder as by the written law.

"Custom," says Eschriche, "is the practice long used and received which has acquired the force of law. In order that custom may be legitimate and not corrupt, it is necessary that it should have been introduced with the tacit consent of the legislator; that it be conformable to the general welfare, and that it should have been observed for the space of ten years. Legitimate custom acquires the force of law not only when there is no law to the contrary, but also when its effect is to abrogate any former law which may be opposed to it, as well as to explain that which is doubtful. Hence, it is said that there may be a custom without law, in opposition to law, and according to law."

Eschriche's *Derecho Espanol*, 23-24.

1 White, 360.

Von Schmidt vs. Huntington, 1 Cal., 55-64.

Panaud vs. Jones, 1 Cal., 488-498.

Castro vs. Castro, 6 Cal., 158.

Donner vs. Palmer, 31 Cal., 500-522.

Every country has a common law of usage and custom by which rights may be acquired, and a right so acquired is as inviolable as if it was founded on a written law.

Strother vs. Lucas, 12 Pet., 410-437.

That this law of custom and usage or common law is embraced within the "laws and ordinances of the government" from which it is alleged the grant was derived, which by section 7 of the act of 1891 is made one of the rules for the guidance of the Court of Private Land Claims, is the settled doctrine of this Court.

In *U. S. vs. Arredondo*, 6 Pet., 691-714, the Court construed this rule expressed in the same words in the act of May 26, 1824, and held that it embraced not only written laws, but also usages and customs which from long observance have acquired the force of law.

In *Strother vs. Lucas*, *supra*, this Court, in speaking of the word laws as used in a treaty, said: "This Court has uniformly held * * * that in the term 'laws' is included custom and usage when once settled, though it may be comparatively of

recent date, and is not one of those to the contrary of which the memory of man runneth not, which contributed so much to make up the common law code which is so justly venerated."

12 Pet., 436.

And the Court will notice judicially the customary as well as the written law.

Fremont vs. U. S., 17 How., 557.

U. S. vs. Perot, 98 U. S., 428.

U. S. vs. Chaves, 159 U. S., 452.

Under the authorities above cited it is submitted that the custom existing and acted upon by both state and national officers for more than thirty years prior to the Gadsden purchase, had become a part of the Mexican law, and that under it, regardless of the written law, the Messrs. Ortiz could as a matter of right have demanded that their title be made complete and perfect. If so, then, supposing the title issued by the Treasurer General to be invalid for want of power in him, because that power belonged to the national government, there is presented a case in which the claimants could by right, and not by grace, have demanded that their title should be made perfect by the former government had the territory not been acquired by the United States, and therefore are entitled to its confirmation under the act of March 3, 1891.

This custom is entitled to the greater respect as being the law of the land, in view of the fact that Mexico was bound by the treaty of Cordova to respect rights such as those of the Canoa claimants, and that the mode in which the duty of the Mexican government in that behalf should be discharged was a matter to be determined by the political department. No law has been found which in any wise conflicts with the exercise of the powers shown to have been habitually assumed by the national and state officers, but, on the contrary, there are many passages in the Mexican laws which show that the Mexican government recognized the obligation to perfect such grants and intended that it should be fulfilled, as, for instance, Art. 31 of the law of May 20, 1825, which provides that "Those

who have an order for the registry of sitios under the former practice are guaranteed by this law."

Reynolds, 131.

It may here be observed that the Spanish word in the Mexican law which is translated "are" is "quedan," the very word used in the Florida treaty, which it was held in the Arredondo case should be translated "shall remain." Giving it that translation in the article above quoted, it will be seen that that article implies and recognizes former guarantees.

The custom was not against law, but clearly in accordance with law, and no reason is perceived why it should not be regarded as of equal force with the written law.

IV.

The extent and location of the grant.

An accurate survey of the grant discloses that there is embraced within the bounds mentioned in the title papers, a considerably greater quantity of land than is stated therein. This has raised the question whether the grant was one by metes and bounds or one of quantity. It is believed that no other conclusion can be reached upon a fair construction of the terms of the grant itself, except that it is one of the former class.

Before proceeding to the consideration of the language of the titulo, it should be observed that there is no uncertainty as to the location of the monuments established at the time of the survey in 1821. The testimony of Mr. Bonillas (record, 14-16) is clear and convincing, and leaves no reasonable doubt as to the accuracy of his survey or that he found and identified eight out of the nine boundary monuments. The center or starting point of the grant and the north center monument are shown to be well-known places, and both the north and south boundaries were also boundaries of other tracts. In this respect the case at bar is in marked contrast with *Ainsa vs. U. S.*, 161 U. S., 208.

It is further distinguished from that case also by the fact that in the *Ainsa* case the record of the original survey showed

that it had been made partially by estimate, while in this case nothing of the kind appears.

Coming now to the terms of the titulo, it is seen that the Messrs. Ortiz, by their petition, registered four sitios of land which had not theretofore been surveyed, and prayed the Intendent to order "that the commanding officer of this military post proceed to the *survey of the registered land*, and take the other steps necessary for obtaining title and confirmation." This petition unquestionably shows that the petitioners desired to have a particular tract of land surveyed and designated, so that they might obtain title thereto.

Thereupon the Intendent ordered that the commanding officer "will proceed to the survey of the land which the petitioner registers, calling the adjacent neighbors, and will appoint expert appraisers, who shall fix a just price," etc. Why should adjacent neighbors be called if no definite tract was to be measured, and how could it be told who were adjacent neighbors? This order, which is the foundation of all the subsequent proceedings by the officials, contains no intimation that a tract was to be surveyed within which there should be thereafter located for the claimants some particular four sitios, but, on the contrary, its express words, and every direction in it, point to the final designation of a particular tract, and the carrying out of proceedings "into such a shape as to present them to me in this special Court, that the corresponding title may be issued."

The survey describes itself as "the survey of the land registered." The surveyor and his assistants measured from the starting point north "378 cordeles, when they reached a place called Saguarito," from whence they measured westerly "50 cordeles, which brought them to a hill." They measured easterly from the Saguarito "50 cordeles, which brought them on the same low ground." Returning to the original starting point, they measured westerly "50 cordeles, which brought them to a little knoll," and measuring easterly from the same starting point "50 cordeles, at the end of which they arrived at a vast low table land." So with the other measurements; they are all definite and have fixed termini, at which were placed marks or monuments in addition to the natural objects described in the field notes, and as a conclusion the survey says: "Thus the said measurements were entirely concluded,

giving as a result four sitios for the raising of cattle and horses, registered by Tomas and Ignacio Ortiz." This is the first mention made in the survey of the area of the grant, and it is distinctly and positively stated that that area results from the measurements made. There were no measurements made except those positively described in the field notes, and which, as has been seen, have fixed termini marked by monuments which have been identified by Bonillas' survey.

The boundaries thus established can not be deemed "out boundaries."

Maxwell Land Grant Case, 121 U. S., 369-372.

In this case it was obviously the intention to make a comprehensive survey of the tract to be sold, and all the elements of a complete description are employed, viz: monuments, course and distance, and quantity. Ordinarily, these take rank in the order named, and it is only where the intention to make the quantity controlling clearly appears that monuments will be disregarded in favor of the less certain description.

3 Wash. Real Prop., 347, 348, 418.

This rule applies as well to grants from the sovereign as to conveyances between individuals.

Brown vs. Hagar, 21 How., 305.

Ward vs. Crotty, 4 Met. (Ky.), 103.

Fulwood vs. Graham, 1 Rich. (S. C.), 491.

However much the Mexican surveyor may have been mistaken as to the quantity of land contained within the limits of his survey, it does not seem possible to doubt that it was his intention to delineate the exact boundaries of the land registered by the Messrs. Ortiz as he was commanded to do in the order of the intendent. There is absolutely nothing to indicate any other purpose, or that the registered land was a portion only of that surveyed. Throughout the survey the monuments, courses and distances and the quantity are evidently used to describe one and the same thing. This is greatly emphasized by the language used in reference to the delivery of possession to the Ortiz brothers; it is said, "and they considering them-

ives as having received the surveyed land, and being satisfied with the survey, were notified that they should conveniently mark their boundary lines with monuments of lime and stone." If they had received the surveyed land, that must have been the tract previously described, and if they were to mark their boundary lines, those boundaries must have been the ones fixed by this survey. They could not mark boundaries of a tract of four sitios within this larger tract, for no such boundaries had been established, nor could possession of such four sitios have been delivered, because none such had been selected.

The commanding officer then caused to be appraised and valued the land "which had been surveyed in favor of Tomas and Ignacio Ortiz of this place, consisting of four sitios," and ordered them to be put up at auction. The auctioneer offered the surveyed lands on thirty successive days, on the last of which they were bid for by the minister of the mission of San Xavier and the registering parties, and were finally knocked down to the minister for \$210, though appraised at \$120. Thereafter the proceedings were referred to the attorney general, and upon his report the final auctions were ordered. When, after more bidding, the lands were finally sold to the Messrs. Ortiz.

It is worthy of note that at both the preliminary and final auctions there was rivalry in the bidding, and it is hardly imaginable that such should have been the case unless it were known with certainty what lands were being sold. Especially when the lands were situated in a region where their value was wholly dependent upon the possibility of procuring water. From the description of the lands contained in the inspection by the surveyor, Gonzales (record, pp. 32-33), it appears that the supply of water on this tract is exceedingly limited, and that the utility of the land for raising cattle and horses depends upon the construction of cisterns at the place called la Canoa. Can it be believed that if the bidders at the auctions had supposed that they were purchasing merely the right to an undetermined four sitios to be located within the boundaries described in the survey, and which might or might not include the water supply, that there would have been rivalry, or, indeed, that any sale could have been made.

But this whole question would seem to be conclusively determined by the fact that juridical possession was delivered to the Ortiz brothers at the time of the survey by the officer making it, and in accordance with it.

In this respect the case at bar is again distinguishable from the Ainsa case.

Gonzales, who made the survey and delivered possession, was a judicial officer; he was sub-delegate judge as well as commanding officer of the Company of Tubac. He is so described in the opinion of the attorney general (record 44), and elsewhere in this titulo. He was, therefore, a competent officer to deliver juridical possession. So, also, the grantees were present on the ground. It is so stated and they signed the act reciting the delivery of possession. (Record, p. 35.)

The language used in our titulo is the same as that in the De la Zanja grant, which was held to show delivery of juridical possession in

Cameron vs. U. S., 148 U. S., 309.

If the grant be one by metes and bounds, as we contend, there can, of course, be no doubt that it was located within the meaning of the sixth article of the Gadsden treaty prior to the cession.

The mere fact that there is found more land within the boundaries than the grant calls for, does not make the grant void.

White vs. Burnley, 20 How., 235.

Ward vs. Crotty, 4 Met. (Ky.), 103.

Nor does it show that it was not located.

Fulwood vs. Graham, 1 Rich. (S. Ct. of App.), 491.

In the case last cited it was held no objection to the location of a grant that the quantity is thereafter ascertained to be more than four times the amount stated in the grant or that the lines are prolonged greatly beyond the distances, or that course is sometimes disregarded.

But if it should be considered that the grant is one of quantity, and that the survey by Gonzales was intended only to

mark a larger tract within which the four sitios petitioned for by and sold to the Messrs. Ortiz, should be located, yet, reading in this light, it will be found that the survey definitely locates the particular four sitios.

No particular method of location is stipulated for in the Gadsden treaty, and there is no warrant for requiring any special form. The evident object of the sixth article of that treaty was to protect the United States against floating grants, or those which had not attached to any particular land. This object is as well accomplished in the case of a grant which contains the data from which the land may be identified, as though it contained the most complete and formal description.

The grant itself need not even contain such a description as without the aid of extrinsic testimony will ascertain precisely what is conveyed.

Blake vs. Doherty, 5 Wheat., 359.

Cox vs. Hart, 145 U. S., 376-389.

The monuments mentioned in the Canoa title are as much at variance with the courses and distances as with the quantity called for; hence, if the former mark out boundaries, the courses and distances, to be given any effect in interpreting the survey, must be considered in connection with the quantity and as having been intended to describe the particular four sitios. That they do describe exactly that quantity is conceded, and as the starting point is a well-known, fixed place, the exact location of the four sitios intended to be sold is made certain beyond controversy. In this view of the case the location is fixed by the central point, for from that, by following the directions of the survey, the exact limits can be ascertained. *Id certum est quod certum reddi potest.* When a point is fixed from which the boundaries can be ascertained, a grant is not void for uncertainty.

Blake vs. Doherty, 359-364.

So far as the rights of individuals are concerned, Courts in the construction of treaties adopt those general rules applied in the construction of statutes, contracts and written instruments generally.

The Amiable Isabella, 6 Wheat., 1.

U. S. vs. Perchman, 7 Pet., 83.

U. S. vs. Payne, 8 Fed. Rep., 892.

North German Lloyd S. S. Co. vs. Hedden, 43 Fed. Rep., 20.

And when a treaty admits of two constructions, one restrictive of the rights that may be claimed under it, and the other liberal as respects such rights, the latter is to be preferred.

Sharks vs. Dupont, 3 Pet., 242.

Hauenstein vs. Lynham, 100 U. S., 483.

1 Kent Com., 174.

No construction of a treaty which would impair that security to private property which the laws and usages of nations would, without express stipulations have conferred, would seem to be admissible further than its positive words require.

Strother vs. Lucas, 12 Pet., 438.

Certainly no undue liberality of construction is required to hold that the Canoa grant is sufficiently located by the designation of its central point, together with the courses and distances given in the titulo, which describe precisely the quantity called for.

It is respectfully submitted that the record shows a valid, complete and perfect grant by metes and bounds, and that the decree of the Court of Private Land Claims should be affirmed.

GEORGE LINES,

Milwaukee, Wisconsin,

Counsel for The Sopori Land and Mining Company.

FREDERICK MARSH AND THOMAS DRISCOLL
Plaintiffs in Error & Appellants

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS

STATEMENT AND BRIEF FOR APPELLANTS

ROCHESTER FORD,
Of Counsel for Marsh & Driscoll

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 297.

THE UNITED STATES, APPELLANT,

vs.

FREDERICK MAISH AND THOMAS DRISCOLL,
PARTNERS AS MAISH & DRISCOLL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT AND BRIEF FOR APPELLEES.

Before discussing the merits of this case, a few points in the abstract and statement prepared on behalf of the United States should be noticed. The statement is made (p. 4) that "the petition asked for four sitios of land at the place called La Canoa." This is not stating the whole of the petition, which is as follows:

"We register in the royal name four sitios of land, which we propose to stock with cattle and horses, offering to pay the just price at which they may be appraised. Therefore we humbly pray and petition that you be pleased to order,

if you think fit, that the commanding officer of this military post proceed to the survey of the registered land and take the other steps necessary for obtaining title and confirmation."

The abstract prepared for the Government states (p. 6) that "it will be noticed that this appraisalment was not signed by the marker, José Antonio Figueroa, and the measurers, Juan José Orosco and Manuel Castro, who were appointed to fill these positions."

The record shows (p. 35) that the persons appointed as appraisers were "Lieutenant Manuel de Leon and the resident citizen Juan José Orosco," and the appraisalment was signed by "those who could write." The inability of Orosco to write ought to be at all times a sufficient explanation for the absence of his signature.

Counsel for the Government states :

"It will be noticed all through these proceedings that four sitios of land was the exact amount offered for sale, without regard to the boundaries or monuments that had been ordered to be placed at the end of the measurements."

We shall try to show that the record is exactly the other way, and that all the proceedings refer not to an exact quantity, but to the tract as surveyed and monumented.

It was admitted by the United States (Rec., p. 23) that this Canoa grant is in its proper place in the archives of the treasurer general of the State of Sonora, at Hermosillo, and that the grant is recorded in its proper place in the Book of Toma de Razon, in the office of said treasurer general. The genuineness of the title papers is conceded. The surveyor, Bonillas, testified that the map of this grant which he made and which was offered in evidence correctly

represents the tract of land called for in the title papers according to the landmarks set out in the title papers, and that he found every monument called for in the title papers, with the exception of the south center monument—not the center monument, as is inaccurately stated at the bottom of page 10 of the brief for the United States—which south center monument had probably been destroyed. This testimony was not questioned, and the tract of land which the title papers state was surveyed was identified beyond any dispute or doubt in any respect whatever.

The dissenting opinion states (Rec., p. 102) that, "without giving each step in detail taken by the officers leading up to a final sale, it is sufficient to say that all the proceedings seem to be in strict conformity with the general practice in such cases at that time," and it is admitted by the Government (Brief for the United States, top of page 8) that the proceedings are regular up to and including the final sale of the land. After the final sale the provincial board of sales issued an order of notice and of its approval in the matter to the superior board of the treasury, and the amount of the purchase-money, with the various taxes and charges, was paid into the national treasury, and a certificate of such payment was duly given on December 21, 1821, signed by the provincial receivers of the national treasury, one of whom was Fuente, the attorney general. Final title was issued in form by the treasurer general of the State of Sonora on February 2, 1849. (Rec., p. 49.)

There is no disputed question of fact in the case. The objections urged by the Government are on questions of law only, and are two:

1st. That "the actions of the various officials in making up this expediente were without lawful authority and vested no equity against the Government;" and,

2d. That "the grant, if valid, was not located."

We shall consider these questions in their order.

ARGUMENT.

The brief and argument for the Government begins with the statement that "the proceedings in this case were initiated at the same time as those for the Sonoita grant, and the cases are to be heard together. In the make-up of the expedientes they are identical down to the point of the issuance of final title."

The examinations made, since the Sonoita case was decided, of the archives at Hermosillo, Mexico, the results of one of which examinations appear in the printed official report of the Government's agents, show beyond question that the actions of the various officials, up to and including the final sale and the payment of the purchase-money into the national treasury of Mexico and the receipt issued therefor, were binding on the Mexican government as the acts of duly authorized officials. The evidence as to this is unlimited and seems conclusive. The three members of the lower court who, on the first presentation of the question in the Sonoita case, were of opinion that the acts of the intend-ant after the revolution were without authority, came to a different opinion on the presentation of the evidence gained from the search of the archives. On this point, as to the

authority of the officers up to and including the sale, the members of the lower court seem to be now unanimous. Mr. Justice Murray, who on other grounds dissented from the decree confirming this grant, states in his dissenting opinion (Rec., pp. 104-105):

"The evidence shows that sales of lands made by intendants before and after independence were recognized by the Mexican government and final title issued to purchasers. The Republic of Mexico had an undoubted right to deal with its citizens in these matters as it saw fit, and to issue final title without reference to the authority of the officers initiating the proceedings or making the sales."

It must be admitted, it would seem, that all the proceedings up to and including the sale and payment of the purchase price of the land were regular and binding on the Mexican nation, because such sales, made before and after independence, were invariably recognized as valid by the Mexican government. This Court has said in *U. S. vs. Peralta*, 17 How., 343, at page 348 (brief in *Sonoita* case, p. 29), that "the government of Mexico, since the revolution, has always respected and confirmed such concessions when any equitable or inchoate right, followed by possession and cultivation, had been conferred by the governors under Spain."

A case like the one now under consideration is even stronger, because the purchasers on payment to the Mexican government of the amount due became the equitable owners of the land. The Mexican government retained the legal title, but held it as a trustee for the purchasers. That one who has paid for land is the beneficial owner and entitled to a conveyance of the legal title is unquestionable,

because, subject to the rules of equity, specific performance is as much a matter of right and of course as is a judgment for damages at law.

If the legal title had not been issued in this case, the petitioners would be entitled to a confirmation of their title by virtue of the equity arising from the payment of the purchase-money.

The act of March 3, 1891, provides that a title arising under the treaty shall be decided (sec. 7) "according to the laws of nations" * * * "and the laws and ordinances of the government from which it is alleged to have been derived." The court shall (sec. 8) "determine the matter according to law, justice, and the provisions of this act," and the United States are bound (sec. 13) to act according to "the principles of public law" and "the provisions of the treaty of cession."

In the *Arredondo* case, 6 Pet., 714, this Court defines the phrase "laws and ordinances" as used in a similar statute. Usages and customs, the Court declares, which existed under the former governments are to be deemed part of their laws and ordinances. The Court said:

"We cannot impute to Congress the intention to not only authorize this Court, but require it, to take jurisdiction of such a case, and to hear and determine such a claim according to the principles of justice, by such a solemn mockery of it as would be evidenced by excluding from our consideration usages and customs which are the laws of every government. * * * The law of the province in which the land is situated is the law which gives efficacy to the grant and by which it is to be tested whether it was property at the time the treaties took effect."

This Court specifically held in *U. S. vs. Chaves*, 159 U. S., 452, in construing the act of March 3, 1891, that it did not

"perceive in any features of the act an intention to restrict the powers of the Court recognized by the previous decisions." "With such articles contained in the treaties and their meaning submitted to our consideration, we have no difficulty in holding that the question is whether the land in controversy was the property of the claimants before the treaty, and, if so, that its protection is guaranteed by the treaties as well as the law of nations."

The official report of the government gives clear, full, and constantly recurring evidence that the Mexican government recognized the validity of sales such as this and issued final titles thereon. That the lands in controversy were regarded as the property of the claimants before the treaty seems beyond dispute. The reply brief in the Sonoita case gives, at pages 19 and 21, a few of the many instances from the official report of the government showing that such purchasers as these were habitually recognized by officers of the Federal Government, and that final title was issued as a matter of right. There was a continuous recognition during twenty-eight years of the validity of such sales as took place in this Canoa grant. If we put on this question the construction which the former government adopted, it seems absolutely certain from the unquestioned evidence that this land was private property before the treaty. The title papers show that the grantees in this Canoa grant went into possession immediately after the survey, which was finished July 11, 1821, and the documents offered in evidence (Rec., pp. 79, 80) show that when it was attempted to survey another grant, the Sopori, over this land the grantees herein protested, exhibiting their title and claiming the land as their private property. This was

in May, 1853. These facts show that the grantees had remained in possession for more than 30 years since the sale of the land in 1821. This is of itself sufficient to warrant the confirmation of this title under the holding in the Chaves case, *supra*.

2. But these purchasers are the owners of this land not only because they paid for it in full, but also because they afterwards received the complete legal title in form, which was issued on February 2, 1849, by the general treasury of the State of Sonora, on the record showing that the purchasers had paid for this land. For this final title the customary fee of \$30 was paid.

As to this final title, the counsel for the United States, on pages 26 and 27 of his brief, commends to our careful consideration what are supposed to be evidently inconsistent positions as to the powers of the intendants and board of sales in selling the land and of the State authorities in issuing final title thereon. What the counsel urges has been carefully considered, and can be directly met and answered according to the interpretation put by the officials of the former government on their own laws.

On pages 68 and 69 of the Record herein and on pages 22, 23, 24, and 25 of the Reply Brief in the Sonoita case are given in full the documents from the Mexican archives, in which, in the year 1831, the commissary general of the Mexican Republic declares that since the law of the classification of the revenues went into effect in Sonora, to wit, on November 1, 1824, "the revenues from lands denounced, surveyed, bounded, auctioned, and possessed prior to said first day of November have been considered one of the revenues

comprised in article 12 of said law"—that is to say, one of the revenues of the State.

We submit that nothing could be clearer than this interpretation of the law of August 4, 1824. Before this law went into effect lands had been habitually sold by the boards of sales for the benefit of the Mexican nation. The validity of such sales was expressly admitted. In many cases like this Canoa grant the lands had been denounced, surveyed, bounded, auctioned, possessed, and paid for prior to November 1, 1824. No one contemplated a confiscation of such lands. On the contrary, it was recognized that the purchasers were entitled to a final title or patent. By whom was this final title to be issued? The statement is unequivocally made that further revenues from such lands belonged to the State. The State, therefore, collected the revenue of \$30 due for a final title, and on payment of this sum issued the title in form.

So far from our positions in this case being inconsistent, they are in accord with the very letter as well as the spirit of the Mexican laws as thus officially interpreted. Title was issued by the treasurer general of the State for two reasons: First, because he recognized that the purchasers were the equitable owners of the land by virtue of their payment therefor; second, he, as the representative of the State, was the proper person to issue title, because the payment therefor was one of the revenues of the State and not of the general government.

Repeated laws of the State of Sonora recognized the validity of sales as in this case and provision for final extension of title by the State. Section 27 of the law of May 20, 1825 (Reynolds', p. 131), decreed that—

"Those who possess sitios and who, although they have them registered and surveyed, have not obtained the title, shall present themselves to the treasurer general" of the State, etc.

Section 61 of the law of July 11, 1834 (Reynolds', p. 188), is similar:

"Those who possess sitios and, although they have them registered and surveyed, have not obtained the title, shall present themselves to the treasurer general" of the State, etc.

Similar provisions occur in the laws of August 11, 1831, and May 12, 1835. (Official Report of Government, pp. 104, 105.)

All of these enactments are based on the validity of prior sales, and recognize the right of the purchasers to have final title issued by the State on the payment of proper charges. None of such laws were ever annulled or called in question by the Mexican nation. Such issuance of final title by the State of Sonora was acquiesced in by the general government, and, as heretofore shown, when Sonora was a department controlled by the federal government, the national government, through its duly appointed officials, extended final titles just as the State had done.

The present case is thus in strict conformity both with the written laws and with universal custom. The final title issued to the purchasers was something that they had the right to demand, as shown by the several laws recognizing such right, and was not merely a matter of favor or grace.

The statement of counsel (p. 27 of brief for the United States) that "article 6 of the law of May 12, 1835, places the judgment of denouncement upon this title, so far as the

State could do so," is certainly not borne out by the law itself. This article is as follows:

"Art. 6. All who have arbitrarily occupied, or occupy, lands belonging to this State, are reputed holders in bad faith, as are those who, having allowed the various extensions of time given for legalizing their possessions to pass, have not paid their proper value into the treasury in time, and still continue to defraud the State of its dues, with malicious and culpable dissimulation; upon proof of such reprehensible conduct not only do the holders in bad faith become liable to lose the lands and improvements they have made, but they shall thereafter be liable, besides, to a rental of five per cent. of the value of the land for each year of arbitrary occupation."

It will be noticed that this article, like all the other laws, contains a distinct claim of ownership by the State, reference being to "lands belonging to this State," and provides for a proceeding in which there must be proof "of malicious and culpable dissimulation." The law did not undertake to pass an arbitrary judgment of denouncement upon any lands. As held by this Court in *Hornsby vs. U. S.*, 10 Wall., 224, lands did not revert to the Mexican government, nor were they subject to be regranted, without an inquisition and decree. An *ipse dixit* forfeiture was unknown.

That there were no grounds of forfeiture is shown by the fact that in 1849, several years later, the State issued final title in this grant. It thus plainly said that there were then no grounds of forfeiture. If any could have been claimed, the issuance of final title was a waiver of them.

Counsel for the United States contends in this, as in other cases, that the State of Sonora had no ownership of the vacant public lands, and therefore no right to sell them. When confronted with the evidence that the State claimed

the ownership and the right to sell and did, in fact, habitually sell such lands and receive pay therefor, it is claimed (pp. 23, 24 of brief for the United States) that "the State of Sonora, because of its immunity from strict surveillance and control, on account of its great distance from the federal district, had susceptibilities, and susceptibilities that were sometimes dangerous, which may account for its extravagant claims to the public lands from time to time."

But this assertion of counsel is submitted to be contrary to historical facts. Sonora was under strict surveillance by the general government, which promptly annulled the laws of Sonora which were considered objectionable. This was done from the earliest time. For instance, the decree of the federal government of March 9, 1829, declares that the decree of the State of the West, No. 97, of December 20, 1828, relative to one D. Francisco Iriarte, is contrary to article 157 of the federal constitution. (Vol. 1, *Leyes y decretos Mexicanos*, p. 7.)

Sonora passed many laws for the sale of lands, but passed no colonization law till May 6, 1850. This law was annulled by the Mexican nation on May 14, 1851 (Reynolds', p. 296). The very repeal acknowledged that the States owned the vacant lands. The language used is:

"Art. 2. In the exercise of the power reserved to the general Congress in article 7 of said law of August 18th, 1824, the frontier and littoral States are prohibited from alienating their vacant lands for colonization, until the regulations to be observed in carrying it out are established."

Here, we submit, is the plain admission on the part of the general government that the States owned "their vacant lands," and that they were free to do with them as they

pleased, except so far as they failed to comply with the bases established by the general Congress for colonization.

As to the laws of Sonora for the sales of her lands to her own citizens the general government interposed no objection. That this silence is a sanction and approval of such laws seems too clear for dispute.

The internal evidence, if such it may be called, furnished by the official report of the Government (pp. 83-89) affords the most convincing proof that the sales of lands in Sonora were made with the knowledge and approval of the general government. The attention of the Court is especially invited to the communication sent on February 23, 1839, by Mendoza, who was then the superior chief of the treasury, to the secretary of state and of the department of the treasury at Mexico (Official Report, pp. 83-89). The reply shows that the questions suggested had been laid before the President of the Republic, under whose directions the answer was given.

These communications seem to be worthy of most careful attention. We believe if there were no other evidence, they would sustain our contention that the States owned the vacant lands and had the right to sell them.

In his communication Mendoza first states that "one of the sources of public revenues in this department is that from the composition and sale of lands," and speaks of the "innumerable registries made by breeders of the immense tracts of public lands which this department has."

This is a direct assertion that the department owned these vacant lands and was in the habit of selling them.

The department acquired title to such lands because it had succeeded to the States, which had theretofore owned

them. The preamble to the grant papers in the Nogales grant, passed on by this Court in *Ainsa vs. U. S.*, 161 U. S., 208, states:

"Whereas article 11 of the sovereign decree No. 70 of the 10th (should be 4th) of August, 1824, ceded to the old States the revenues which in said law the general government did not reserve to itself, one of which is that from the lands (terrenos) in their respective districts, which therefore belong to them, and for the disposal of which the honorable constituent congress of the State which was Sonora and Sinaloa united, enacted law No. 30 of the 20th of May, 1825, as did also the successive legislatures other decrees concerning them, which enactments have been retained in sections 3d, 4th, 5th, 6th, and 7th of chapter 9 of the organic law of the treasury, No. 26, of the 11th of July, 1834, the said revenue from lands being now one of those of this department of Sonora, which have continued and must continue, as provided in article 1 of the decree of the 17th of April, 1837, that of the 28th of the same month of 1839, and of the 24th of December, 1840, as well as the supreme order of the 21st of said month and year," etc.

No language could be used which would more strongly state the fact that the vacant lands in the States belonged to them. This was the uniform interpretation of the law as announced not only by the State authorities but by the officers of the Federal Government.

Mendoza speaks next "of the multitude of finished expedientes of lands that exist therein" (in the office of the treasury), and of those "the proceedings in which are pending, and from those that are instituted anew more and more every day."

This, it will be noticed, was in 1839. The State of Sonora had been selling lands for many years prior. Such expedientes were then in the archives, as they are now. Their

validity was not called in question. It was taken for granted that the State had the right to make them.

Mendoza then speaks of the various laws regarding lands which the State of Sonora saw itself under the necessity of enacting. Copies of these laws he inclosed. No question was raised as to the validity of such laws or of the sales made under them. Mendoza states that as occasion arose the treasurer general of the State of Sonora consulted the governor, who determined upon the advice of his council or of the honorable Congress. Moreover, questions of litigation regarding such sales were forwarded to the competent courts and tribunals.

All this takes it for granted that the sales by the State were lawful. Never once was the validity of such sales questioned. We ask with much earnestness, Is it possible to believe that the question of the want of power in the State of Sonora would not have been raised in some one of "the multitude of finished expedientes," if there were any doubt as to her right? Is not the acquiescence of all the authorities, of the competent courts and tribunals, absolutely irresistible proof that Sonora was regarded as acting rightfully?

Mendoza then speaks of those cases "that offer no difficulty in their consideration and conclusion, as happens in the matter of vacant public lands, which, without the opposition of any one, are registered, surveyed, appraised, published, and sold and titles issued thereto after the corresponding payments."

The Mexican officials found no difficulty as to the sale of lands in Sonora. The department, as this letter from Mendoza shows, habitually sold lands just as the State had sold them before, and as it sold them afterwards when the State

form of government was resumed. The laws under which such sales were made were always stated as the same, to wit, as set out in the preamble to the Nogales grant, the law of August 4, 1824, by which the public lands of Sonora belonged to her as a State and afterwards to her as a department.

The communication of Mendoza was laid before the President of the Republic, and no objection was suggested by him as to the sale of such lands. We believe it within bounds to say that clearer proof of the practice of the State and department and of the approval by the general government of such practice could not be furnished.

Counsel asks, page 30 of his brief, "Where can it be found that a treasurer general of a State in 1849 had authority to extend a title based upon the law of September 17, 1846, or any other proceedings, law, order, or decree?"

The answer to this is given in the preamble to this Canoa grant, where the recital is that "said mentioned sale of lands being assigned anew to the State, which has continued and will continue to collect revenues (or taxes) by virtue of the general law of classification, dated September 17, 1846."

That law gave to the States "all the revenues, imposts, and taxes established by general laws" which were not specifically given to the federation. The provision is the same as article 11 of the law of August 4, 1824, that "the revenues not included in the foregoing articles belong to the States." This article, as we have shown, meant that the vacant lands and the proceeds from their sales belonged to the States. The same construction was given to the same provision in the law of September 17, 1846. We have shown that "the revenues from lands denounced, surveyed, bounded, auc-

tioned, and possessed prior to the 1st day of November, 1824," were considered one of the revenues of the State. The fee for the final extension of this title was one of the revenues of Sonora, and such title was issued by the proper official, the treasurer general.

Location of this Grant.

That this grant is one by metes and bounds according to the survey set out in the title paper will appear, it is submitted, from the following considerations:

I.

The Language of the Grant.

The titulo shows unmistakably that the sale was of four sitios as surveyed by Gonzales in 1821.

a. The applicants registered four sitios of land and prayed "that the commanding officer of this military post proceed to the survey of the registered land and take the other steps necessary for obtaining title and confirmation." The petitioners were not applying for an unsurveyed quantity, but for four sitios, to be located by a survey prior to their sale.

b. The order of the intendente, Cordero, was that "the commanding officer of the company of Tubac will proceed to the survey of the land which the petitioner registers, calling the adjacent neighbors, and will appoint expert appraisers, who shall fix a just price." The survey was not of a tract within which the land was to be afterwards located, but was in terms a survey of the land registered.

c. The officer proceeded "to the place called La Canoa in order to carry out the measurement of the four sitios registered by Tomas and Ygnacio Ortiz."

d. The commandant, "in order to proceed to the measurement of the registered land," appointed the officials.

e. The officer "ordered that an inspection and examination of the registered land should be made first," and reported its character and the fact that a well could "be constructed at the place called La Canoa."

f. The officer, "in order to begin the survey of the land registered by Tomas and Ygnacio Ortiz," began at the "spot which the interested parties had designated as a center." The details of the survey are given in full, and the result was as follows :

"From all these measurements it follows that the land is bounded on the north for five leagues, more or less, by the Mission of San Xavier del Bac; on the west only by land inhabited by friendly people allied to us; on the east by land inhabited by the hostile Apaches, and on the south it is bounded by the boundary line of the military post of Tubac. Thus the said measurements were entirely concluded, giving as a result four sitios for the raising of cattle and horses, registered by Tomas and Ygnacio Ortiz, of this place, and they, considering themselves as having received the surveyed land and being satisfied with the said survey, were notified that they should conveniently mark their boundaries with monuments of lime and stone, as the law demands."

l The appraisement and valuation were specifically of the "land which had been surveyed in favor of Tomas and Ygnacio Ortiz, of this place, consisting of four sitios, for the raising of cattle and horses." The appraisers reported that "each sitio should be valued at thirty dollars."

g. After the "survey and appraisement of the lands at the place of San Ygnacio de la Canoa, consisting of four sitios for the raising of cattle and horses," had been concluded, they were bid on for thirty days.

h. What was bid on was "the lands of the place called San Ygnacio de la Canoa, and consisting of four sitios for the raising of cattle and horses, surveyed in favor of Tomas and Ygnacio Ortiz."

i. Report of attorney general. This officer recites the petition, the "respective survey from which resulted, without any detriment to adjacent neighbors, four sitios of land for the raising of cattle," which were appraised at the rate of \$30 each sitio, and recites "that the Reverend Father Fray Juan Bana bid on the said surveyed land," and the attorney general recommended that the three public auctions of the said lands take place in the capital.

j. "The three public auctions and final sale of the lands referred to in these proceedings" was ordered. The language of the first auction was as follows:

"Here before this board of the treasury are being sold four sitios of public land for the raising of cattle, situated at the place called San Ygnacio de la Canoa, within the jurisdiction of the military post of Tubac, surveyed in favor of Tomas and Ygnacio Ortiz, residents of that same town, and appraised in the sum of \$120, being at the rate of \$30 for each sitio, it being necessary to dig a well to make the land useful."

At the last auction "the same statements were made by the auctioneer as on the first auction, with only this differ-

ence: that the public were notified that this would be the final sale," and "in this manner these proceedings terminated, the four sitios of unappropriated land composing the place called San Ygnacio de la Canoa, to which this record refers, being solemnly sold to those who originally registered them."

k. Final judgment was then given by the intendente, who states that he had "examined all these proceedings of survey, appraisalment, public sales, auctions, and final sale of the unappropriated lands of the place called San Ygnacio de la Canoa, situated within the jurisdiction of the military post of Tubac and comprising four sitios, for the raising of large cattle and horses, in favor of Tomas and Ygnacio Ortiz, residents of the same." He declared "all the steps taken in that matter to be correct, sufficient, and in accordance with the rules as laid down by the superior decrees," and ordered the parties to pay into the national treasury "the amount of the bid at which they obtained the said land at the final auction" and the customary charges; which amounts were paid on December 17, 1821, into the national treasury, as fully appears by the record.

All this language refers to a sale of the "said surveyed public lands." The language is so clear that no comment on it seems necessary.

II.

The delivery of juridical possession in this grant according to the survey makes it a grant by metes and bounds.

Immediately after the survey was made the grantees "received the surveyed land, and, being satisfied with the survey, were notified that they should conveniently mark their boundary lines with monuments of lime and stone, as the law demands."

This was in the presence of the witnesses and officials, one of whom, the lieutenant commanding, represented the military post of Tubac, on which the land bounded on the south. The representative of the Mission of San Xavier del Bac, on which the land bounded on the north, knew of the survey and bid on the land.

This was an official delivery of the possession of the tract as surveyed, and under all the authorities, a number of which are cited in *Ainsa vs. United States*, 161 U. S., 208, 230, 231, involving the Nogales grant, constitutes the grant one by metes and bounds. This case comes within the very language as well as the principle of the Nogales case. In that case the Court say, at page 227 :

"Appellants' contention that Don Elias and his parents took all the public lands north of Casita as one tract by metes and bounds could be sustained only on proof of a determination of such metes and bounds by actual survey and delivery of possession accordingly."

In this Canoa grant we have the determination of a tract by metes and bounds by an actual survey which is not ques-

tioned in any respect, and we have the official delivery of possession accordingly of said "surveyed land."

The Supreme Court held in *Cameron vs. United States*, 148 U. S., 301, 309, that the same language used in this grant showed that "juridical possession had been delivered in pursuance" of the survey previously made. The language in the two grants, as to the delivery of possession, is the same.

III.

The construction put on this grant in 1849 shows that it was a grant by metes and bounds.

It will be remembered that although the lands had been surveyed and the parties put in possession of the surveyed land in 1821, final title was not issued till 1849. When this title was issued it is stated in both the receipt of payment and in the preamble to the grant to be of "four sitios for the raising of cattle and horses, situated in the place called San Ygnacio de la Canoa, in the jurisdiction of the district of this capital, which sitios were surveyed in the year 1821 by the surveyor, Mr. Ygnacio Elias Gonzales," and the grantees were admonished to "keep within the limits of the land, its appurtenances, landmarks, and boundary lines as precisely established in the foregoing statement of survey made in 1821 by the deceased Ygnacio Elias Gonzales."

This Court said in the *Nogales* case that "no reason was perceived for disregarding the construction put upon the titulo" in that case by the Mexican government in 1882 and 1886, long after the treaty. In this Canoa case we have a construction put upon the grant by the granting

authorities at the time of issuing title, that it was a grant of four sitios "which were surveyed in the year 1821." The contention of the Government is that it was a grant of four sitios which were not surveyed. The grant itself says that they were surveyed, and if the language of the instrument is to control, there can be no question that this is a grant by the metes and bounds of the survey.

It is simply impossible to hold that this grant is a grant by quantity, for such grants were floating grants, while this grant is located by the central point, the Canoa, from which the measurements were made. In respect of this central point, and also of the delivery of possession, it is entirely different from the Nogales grant.

IV.

The grantees acquired by prescription any surplus in this grant.

It will be noticed that though the tract of land sold is stated to consist of four sitios, the grantees paid \$210 for the land, which, at \$30 per sitio, paid for seven sitios. They went into possession of the surveyed land in 1821, and held the same till the treaty—32 years. They thus acquired any surplus over four sitios, for under the Mexican law "a title with fixed boundaries, although containing more than the grant calls for, may be sustained by prescription for the whole thereof against the sovereign." "It is evident that by virtue of the cedula of 1754 all possessions with or without titles, or with fixed or undetermined boundaries in the

grants, or the possession of more land than is designated in the grant, can be held as against the sovereign." (Hall's Mexican Law, § 56; U. S. *vs.* Chaves, 159 U. S., 452, 464.)

Under every view of this case, it is submitted that this grant should be confirmed according to the metes and bounds of the Bonillas survey, and that the decision of the lower court should be affirmed.

ROCHESTER FORD,
Of Counsel for Maish & Driscoll.

Opinion of the Court.

UNITED STATES v. MAISH.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 297. Argued March 15, 16, 1898. — Decided May 31, 1898.

Ely's Administrator v. United States, ante, 220, affirmed and followed.

THE case is stated in the opinion.

Mr. Rochester Ford and *Mr. James C. Carter* for appellant.

Mr. Special Assistant Reynolds for appellees. *Mr. Solicitor General* was on his brief.

Mr. George Lines filed a brief on behalf of the Sopori Land & Mining Company.

MR. JUSTICE BREWER delivered the opinion of the court.

This case resembles that of *Ely's Administrator v. United States* just decided, ante, 220. The proceedings for the sale were had in 1820 and 1821 and before the same intendant. We deem it unnecessary to add anything to what was stated in that opinion as to the law controlling. It is sufficient to say that while the claim now made is for 46,696.2 acres, the application for purchase was for four sitios (17,353.84 acres). All the proceedings contemplated a sale of only that amount of land. Thus the appraisers stated that "from their examination they said that each sitio should be valued at thirty dollars, taking into consideration that none of them had running water or natural standing water, but that water facilities might be obtained by means of a well." The first of the three final auctions was reported in these words:

"In the city of Arizpe, on the 13th day of December, 1821, there met as a board of auction the provisional intendant, as president, and the other members that compose it, to hold the first auction of the lands to which these proceedings refer, and they caused the people to be assembled at this office by

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the beating of the drum, and many persons gathered at the office of the intendant, when the auctioneer, Loreto Salcido, in their presence was ordered to ask for a bid, which he did in a loud and clear voice, saying: 'Here before this board of the treasury are being sold four sitios of public land for the raising of cattle situated at the place called San Ygnacio de la Canoa, within the jurisdiction of the military post of Tubac, surveyed in favor of Tomas and Ygnacio Ortiz, residents of that same town, and appraised in the sum of one hundred and twenty dollars, being at the rate of thirty dollars for each sitio, it being necessary to dig a well to make the land useful.

Whosoever wishes to make a bid upon this land, let him come forward and do so in the manner established by law before this board, where his bid will be heard, notice being given that the Rev. Father Fray Juan Bano, minister of the mission of San Xavier del Bac, in the name of Ygnacio Sanches and Francisco Flores, resident citizens of the same town, had bid for said land the amount of two hundred and ten dollars; and with the understanding that on the third auction, which is to take place on the day after to-morrow, the sale shall be settled upon the highest bidder.' As no bidder appeared, the board adjourned, and the minutes were signed by the president and members of this board."

At the third auction a bid of two hundred and fifty dollars was made, and on that bid the property was struck off to Tomas and Ygnacio Ortiz, who subsequently paid into the treasury the full amount of the purchase price with all charges. Nothing seems to have been done on this purchase until 1849, when title papers were issued by the substitute treasurer general of the state of Sonora.

Without repeating the discussion contained in the foregoing opinion, we think that the grant should be sustained for the four sitios purchased, petitioned and paid for, and for no more. As the grant was confirmed *in toto*, we are compelled to order that the decree of the Court of Private Land Claims be

Reversed, and the case remanded to the court for further proceedings.